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MASTER LOAN AND SECURITY AGREEMENT

among

**FEDERAL RESERVE BANK OF NEW YORK,
as Lender**

and

**THE PRIMARY DEALERS PARTY HERETO,
each on behalf of itself and its respective Applicable Borrowers,**

**THE BANK OF NEW YORK MELLON,
as Administrator,**

and

**THE BANK OF NEW YORK MELLON,
as Custodian,**

in connection with the

TERM ASSET-BACKED SECURITIES LOAN FACILITY

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LOAN AND SECURITY TERMS

1.0 SCOPE

- 1.1. This Master Loan and Security Agreement (this “**Agreement**”) is entered into among Federal Reserve Bank of New York, as Lender, each of the Primary Dealers from time to time party hereto, each on behalf of itself and its respective customers as Borrowers hereunder from time to time, The Bank of New York Mellon, as Administrator, and The Bank of New York Mellon, as Custodian.
- 1.2. This Agreement sets forth the terms under which a Borrower may, in accordance with the terms and conditions of Federal Reserve Bank of New York’s Term Asset-Backed Securities Loan Facility (“**TALF**”), obtain Loans from, incur Obligations to, or pledge Collateral to, Lender, in each case through the services of the Applicable Primary Dealer serving as such Borrower’s agent in connection with TALF with respect to such Loans.

2.0 DEFINED TERMS

- 2.1. The capitalized terms used hereafter in this Agreement have the meanings defined below:

Above Par Collateral means any Item of Collateral the Market Price of which exceeds 100.00% (measured as of the third Business Day prior to the Applicable Loan Closing Date (it being understood that if such Item of Collateral is New Acquisition Collateral, the Market Price shall be the price set forth on the applicable Sales Confirmation)).

ABS Event of Default means, with respect to an Item of Collateral other than CMBS Collateral, an event or circumstance that constitutes an event of default as defined in the Governing Documents for such Item of Collateral, to the extent that such event of default has not been waived in accordance with such Governing Documents.

Administrative Fee means, with respect to each requested Loan, the administrative fee required to be paid with respect to such Loan, calculated on the basis of the information set forth in the Loan Request or any revised Loan Request delivered pursuant to Section 3.3, in an amount equal to the proposed principal amount of such Loan multiplied by the Administrative Fee Rate with respect to such Loan.

Administrative Fee Rate means, ~~at any time~~ with respect to any proposed Loan to be secured by Eligible Collateral of any particular Class, the “Administrative Fee Rate” specified in the TALF Standing Loan Facility Procedures ~~at such time~~ for a Loan to be secured by Eligible Collateral of such Class.

Administrator means The Bank of New York Mellon, in its capacity as Administrator under the Collateral Custody and Administration Agreement, or any successor in such capacity.

Advance Rate, with respect to any Class of Eligible Collateral, means the excess of (x) 100.00% over (y) the Haircut Percentage with respect to such Class (or, in the case of an Item of Legacy CMBS Collateral, the Haircut Percentage with respect to such Item) at the time of determination.

Adverse Claim has the meaning specified in Section 10.1(e)(iii).

Affiliate means, when used with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

Applicable Borrower, with respect to any Primary Dealer, means each Borrower that has requested or received (including by assumption) a Loan hereunder through such Primary Dealer.

Applicable Fixed Rate Benchmark Period means, (i) with respect to a Fixed Rate Loan having a Stated Maturity Date that is the third anniversary of the Applicable Loan Closing Date (each such Loan, a “**Three-Year Fixed Rate Loan**”), the period set forth in the table below corresponding to the Average Life of the Items of Eligible Collateral securing such Three-Year Fixed Rate Loan as of the Applicable Loan Closing Date:

<u>Average Life of Each Item of Eligible Collateral (as of Applicable Loan Closing Date)</u>	<u>Applicable Fixed Rate Benchmark Period</u>
Average Life of Each Item is Less than One Year	1 year
Average Life of Each Item is Less than Two Years, but the Row Above Does Not Apply	2 years
Neither of the Above Rows Applies	3 years

; *provided* that the Applicable Fixed Rate Benchmark Period with respect to a Three-Year Fixed Rate Loan secured by SBA Collateral or CMBS Collateral shall be 3 years and (ii) with respect to a Fixed Rate Loan having a Stated Maturity Date that is the fifth anniversary of the Applicable Loan Closing Date, 5 years.

Applicable Loan Closing Date, with respect to any Loan, means the date on which such Loan was made.

Applicable Primary Dealer, with respect to any Loan requested by a Borrower, the Primary Dealer through which such Borrower has made such request.

Auditor Attestation means, with respect to any Item of Collateral or proposed Collateral (other than SBA Collateral or CMBS Collateral), a signed report from a nationally recognized independent accounting firm that is registered with the Public Company Accounting Oversight Board, addressed to Lender and delivered to Lender by such accounting firm, in the form set forth in the TALF Standing Loan Facility Procedures under the link “TALF Auditor Attestation Form”.

AUP Report (Industry) means, with respect to any Item of [Newly Issued](#) CMBS Collateral or proposed [Newly Issued](#) CMBS Collateral, a signed report on agreed-upon procedures from a nationally recognized independent accounting firm that is registered with the Public Company Accounting Oversight Board, addressed to, among others, the sponsor and the underwriter or initial purchaser of such Item of [Newly Issued](#) CMBS Collateral [or proposed Newly Issued CMBS Collateral and delivered to Lender](#).

AUP Report (TALF) means, with respect to any Item of [Newly Issued](#) CMBS Collateral or proposed [Newly Issued](#) CMBS Collateral, a signed report on agreed-upon procedures from a nationally recognized independent accounting firm that is registered with the Public Company Accounting Oversight Board, addressed to, among others, Lender and TALF LLC, and delivered to Lender by such accounting firm, in the form set forth in the TALF Standing Loan Facility Procedures under the link “Form of TALF-Specific Agreed-Upon Procedures Report”.

Average Life means, with respect to any Item of Collateral or proposed Collateral at any time, the average life (in the case of a non-amortizing Item of Collateral or proposed Collateral) or weighted average life (in the case of an amortizing Item of Collateral or proposed Collateral) thereof calculated, where applicable, in accordance with the prepayment assumptions specified in the TALF Standing Loan Facility Procedures and specified in the applicable Offering Materials, as adjusted to reflect the elapsed time from the date of issuance of such Item of Collateral or proposed Collateral (*provided, that the “Average Life” of any Item of Legacy CMBS Collateral or proposed CMBS Collateral shall be determined in the manner set forth in the TALF Standing Loan Facility Procedures*).

Board means the Board of Governors of the Federal Reserve System.

Borrower means each Person that incurs Obligations to Lender by borrowing Loans hereunder, to the extent any such Obligations remain outstanding.

Business Day means any day Lender is open for conducting all or substantially all its banking functions.

Class, when used with respect to any Eligible Collateral, means the class of [Collateral](#) to which such Eligible Collateral belongs, as set forth in the TALF Standing Loan Facility Procedures.

CMBS Collateral means commercial mortgage-backed pass through securities ~~issued on or after January 1, 2009.~~

CMBS Credit Support Depletion Event means, with respect to an Item of CMBS Collateral, that (x) the aggregate outstanding certificate principal balance of the classes of securities that provide credit support to such Item of CMBS Collateral minus (y) the aggregate amount of “appraisal reduction” amounts in effect with respect to the underlying mortgage loans and REO properties that back such Item is less than or equal to zero. For this purpose, “appraisal reduction” amounts shall be the amounts determined as such under the Governing Documents for the relevant Item of CMBS Collateral.

CMBS Ratings Eligibility Requirements means, with respect to each Item of Legacy CMBS Collateral or proposed Legacy CMBS Collateral, the requirement that, for such Item of Legacy CMBS Collateral or proposed Legacy CMBS Collateral to constitute Eligible Collateral, it must have, as of the applicable Loan Subscription Date, a credit rating in the highest long-term investment grade category from at least two TALF CMBS-eligible rating agencies (as defined in the TALF Standing Loan Facility Procedures) and not have a credit rating below the highest long-term investment grade rating category from any TALF CMBS-eligible rating agency, and such other ratings-related requirements as are specified in the TALF Standing Loan Facility Procedures.

Collateral means, with respect to each Loan:

- (i) all of the Borrower's rights, title, and interest in property that is (a) identified as "collateral" for such Loan on a Final Confirmation or (b) identified on the books or records of Custodian as pledged to, or subject to a security interest in favor of Lender to secure the Obligations with respect to such Loan, and all proceeds thereof;
- (ii) all documents, books and records, including programs, tapes, and related electronic data processing software, evidencing or relating to any or all of the foregoing; and
- (iii) to the extent not otherwise included, all proceeds and products of any and all of the foregoing and all supporting obligations given by any person with respect to any of the foregoing, including but not limited to interest, dividends, insurance, rents and refunds.

Collateral Custody and Administration Agreement means the agreement between Lender and The Bank of New York Mellon, pursuant to which The Bank of New York Mellon shall provide custodial and administrative services with respect to the Collateral and the Loans.

Collateral Enforcement Event, with respect to any Borrower, means any of the following:

- (i) any Obligation with respect to any Loan made to such Borrower is not paid when payment thereof is required (determined for this purpose without regard to Section 17.0); *provided*, that in the case of any failure to pay when due any Monthly Loan Interest Expense Amount:
 - (1) such failure, to the extent resulting from a Monthly Interest Timing Difference Amount (or the cumulative effect of prior Monthly Interest Timing Difference Amounts), shall not constitute a Collateral Enforcement Event, and
 - (2) such failure, to the extent resulting from a Monthly Interest Deficiency Amount, shall not constitute a Collateral Enforcement Event if the applicable Borrower shall have made payment of the Monthly Interest Deficiency Amount on or before the 30th day after the delivery to it of the related Interest Deficiency Notice.
- (ii) such Borrower fails to perform or observe any of its obligations or agreements under the Lending Agreement or under any other instrument or agreement delivered or executed in connection with the Lending Agreement, and such failure continues for a period of five Business Days;
- (iii) any representation or warranty made or deemed to be made by such Borrower or made on behalf of such Borrower under or in connection with the Lending Agreement, or that is contained in any certificate, document or financial or other statement delivered by it or in connection with the Lending Agreement, is inaccurate in

any material respect on or as of the date made or deemed made by such Borrower or made on behalf of such Borrower;

- (iv) the Insolvency of such Borrower;
- (v) the Lending Agreement or any other agreement delivered or executed in connection with the Lending Agreement ceases, for any reason, to be in full force and effect with respect to such Borrower, or such Borrower so asserts, or any security interest or lien created hereby to secure a Loan made to such Borrower ceases to be enforceable or to have the same effect and priority purported to be created hereby;
- (vi) any encumbrance upon Collateral securing any of such Borrower's Loans arises (other than the security interest created under the Lending Agreement), and such encumbrance remains undischarged for a period of five Business Days; or
- (vii) any event of default (or equivalent event or circumstance) arises under any indenture or other agreement governing the terms of any of such Borrower's Collateral as a result of the Insolvency of the issuer of such Collateral.

Collateral Surrender has the meaning specified in Section 13.1.

Collateral Surrender and Acceptance Notice means a Collateral Surrender and Acceptance Notice in the form of Appendix 5.

Collateral Surrender Right has the meaning specified in Section 13.1.

Collateral Value, with respect to any Item of Eligible Collateral of any Class, means the product of (x) the Market Value thereof multiplied by (y) the Advance Rate with respect to the applicable Class; *provided*, that the Collateral Value assigned to any Eligible Collateral that is not held in or credited to the Master TALF Collateral Account shall be zero.

Confirmation has the meaning specified in Section 3.5.

Control means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and the terms "Controlling" and "Controlled" shall have meanings correlative thereto.

Custodian means The Bank of New York Mellon, in its capacity as Custodian under the Collateral Custody and Administration Agreement, or any successor in such capacity.

Customer Agreement means a customary customer account agreement entered into by each Primary Dealer with each of its Applicable Borrowers, but containing the provisions set forth in Appendix 2 (or alternate provisions equivalent in substance thereto).

Determination Date, with respect to any Loan, means the date that is two Business Days after each Loan Accrual Date.

Development Company Participation Certificates means SBA Collateral backed by loans made pursuant to the Certified Development Company/504 loan program of the U.S. Small Business Administration.

Dollars mean dollars in lawful currency of the United States.

DTC means The Depository Trust Company.

Early Amortization Event, with respect to any Item of Collateral that includes a revolving period, means an event (specified in the ~~related indenture, pooling and servicing agreement, trust agreement or any operative document that governs the application of collections~~ Governing Documents for such Item of Collateral) that results in (x) the commencement of principal payments on such Item of Collateral during the period that would otherwise be the revolving period and/or (y) if such event occurs after the termination of the revolving period, an increase in the amount of principal payments that would otherwise have been required to be made on such Item of Collateral on any scheduled payment date (or an acceleration in the timing of the making thereof), to the extent that such event has not been waived in accordance with such Governing Documents.

Eligible Borrower means a Person that, at any time of determination, satisfies the criteria set forth in the TALF Standing Loan Facility Procedures applicable to “eligible borrowers”.

Eligibility Criteria, with respect to any Collateral at any time, means all of the “Eligibility Criteria” specified in the TALF Standing Loan Facility Procedures at such time.

Eligible Collateral means Collateral that satisfies the Eligibility Criteria.

Eligible Collateral Schedule has the meaning specified in Section 3.4.

Expected ABS Collateral has the meaning specified in Section 3.5(c).

Fed Funds Margin means, with respect to each Floating Rate Fed Funds Loan made on the same Loan Closing Date, the interest margin over the Fed Funds Target Rate (denominated in basis points), announced by Lender in advance of such Loan Closing Date and set forth in the TALF Standing Loan Facility Procedures, applicable to Floating Rate Fed Funds Loans to be made under TALF on such Loan Closing Date.

Fed Funds Target Rate means, for any Loan Accrual Period with respect to any Floating Rate Fed Funds Loan, the target federal funds rate as established by the Federal Open Market Committee (the “**FOMC**”) and made available on the internet site <http://www.federalreserve.gov/fomc/fundsrate.htm> or, if not available on such internet site, as otherwise published by the FOMC, in effect as of 12:00 noon on the second Business Day preceding the first day of such Loan Accrual Period (or, in the case of the initial Loan Accrual Period for any Floating Rate Fed Funds Loan, as of 12:00 noon on the applicable Loan Subscription Date). If the target federal funds rate is a range of rates, Lender shall have the discretion to determine the Federal Funds Target Rate, so long as the determined rate is within such range.

FFELP Loans means education loans made under the Federal Family Education Loan Program authorized under the Higher Education Act.

Final Confirmation has the meaning specified in Section 3.6(e).

Five-Year Loan means a Loan having a Stated Maturity Date that is the fifth anniversary of the Applicable Loan Closing Date.

Fixed Rate means, with respect to each Fixed Rate Loan made on the same Loan Closing Date, the per annum interest rate, announced by Lender in advance of such Loan Closing Date and set forth in the TALF Standing Loan Facility Procedures, to be applicable to such Fixed Rate Loan. The Fixed Rate applicable to each Fixed Rate Loan shall be the market reference rate plus a margin then being used by Lender to set interest rates on Fixed Rate Loans for the Applicable Fixed Rate Benchmark Period.

Fixed Rate Loan means a Loan that bears interest at a Fixed Rate, as specified in the applicable Final Confirmation.

Floating Rate means, for each day during any Loan Accrual Period:

(i) with respect to each Floating Rate LIBOR Loan made on the same Loan Closing Date, the sum of (x) LIBOR for the applicable Loan Accrual Period plus (y) the LIBOR Margin,

(ii) with respect to each Floating Rate Fed Funds Loan made on the same Loan Closing Date, the sum of (x) the Fed Funds Target Rate for the applicable Loan Accrual Period plus (y) the Fed Funds Margin and

(iii) with respect to each Floating Rate Prime Rate Loan made on the same Loan Closing Date, the sum of (x) the Prime Rate for the applicable Loan Accrual Period minus (y) the Prime Rate Margin; *provided*, that the Floating Rate with respect to a Floating Rate Prime Rate Loan shall not be less than 1.00%.

Floating Rate Fed Funds Loan mean any Loan the Collateral for which consists solely of SBA Pool Certificates.

Floating Rate LIBOR Loan means any Floating Rate Loan other than a Floating Rate Fed Funds Loan or a Floating Rate Prime Rate Loan.

Floating Rate Loan means a Loan that bears interest at a Floating Rate, as specified in the applicable Final Confirmation.

Floating Rate Prime Rate Loan means any Loan the Collateral for which consists solely of securities that (x) are backed by private student loans and (y) bear interest at a rate that is set by reference to a published or quoted prime rate of interest.

Governing Documents means, with respect to an Item of Collateral, the instruments and agreements (including any indenture, pooling and servicing agreement, trust agreement, servicing agreement, other similar agreement and other operative document), however denominated, pursuant to which such Item of Collateral was issued, the assets backing such Item are serviced and collections on such assets are applied, remitted and distributed.

H.15 Prime Rate means, for any day, the rate of interest set forth for that day opposite the caption "Bank Prime Loan" in the H.15 daily statistical release

designated as such, or any successor publication, published by the Board, available on the internet site <http://www.federalreserve.gov/releases/h15/current>, or any successor site or publication. The H.15 Prime Rate for any day for which there is no such statistical release shall be the H.15 Prime Rate for the most recent day for which there was such a statistical release.

Haircut Amount means, with respect to any Item of Eligible Collateral, the product of (x) the Market Value thereof multiplied by (y) the Haircut Percentage applicable thereto.

Haircut Percentage means, with respect to each Class of Eligible Collateral, the percentage set forth in the TALF Standing Loan Facility Procedures as the “Haircut Percentage” applicable to such Class; provided, that Haircut Percentage with respect to any Item of Legacy CMBS Collateral shall be equal to (x) the “base dollar haircut” percentage applicable thereto set forth in the TALF Standing Loan Facility Procedures divided by (y) the Market Price thereof.

Indemnified Party has the meaning specified in Section 15.1.

Indemnity Undertaking means, with respect to any Item of Collateral or proposed Collateral (other than SBA Collateral or Legacy CMBS Collateral), an indemnity undertaking, addressed to Lender and delivered to Lender by or on behalf of the applicable sponsor of the transaction pursuant to which such Collateral has been or will be issued, in the form set forth in the TALF Standing Loan Facility Procedures (it being understood that (x) the form with respect to such Collateral other than Newly Issued CMBS Collateral shall be as set forth in the TALF Standing Loan Facility Procedures under the link “Form of Certification as to TALF Eligibility for Non-Mortgage-Backed ABS” and (y) the form with respect to Newly Issued CMBS Collateral shall be as set forth in the TALF Standing Loan Facility Procedures under the link “Form of Certification as to TALF Eligibility for Newly Issued CMBS”).

Initial Loan Request has the meaning specified in Section 3.1.

Insolvency, with respect to any Person, means:

- (i) the condition of insolvency of such Person;
- (ii) that a proceeding relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to adjudicate an entity bankrupt or insolvent or seeking reorganization, adjustment, dissolution, liquidation or other relief with respect to such Person or such Person’s debt is commenced;
- (iii) that an assignment for the benefit of such Person’s creditors occurs;
- (iv) that a receiver, custodian, conservator, or the like is appointed for such Person or for any of its United States or foreign branches or agencies;
- (v) that such Person has been closed by order of its supervisory authorities, or a public officer has been appointed to take over such entity;

- (vi) that such Person ceases or refuses to make payments in the ordinary course of business, or admits in a record its inability to pay its debt as they become due;
- (vii) that such Person's business is suspended, or any party has presented or filed a petition for winding-up or liquidating such Person; or
- (viii) the existence of any other circumstances that evince such Person's inability to pay its debts when due.

Interest Deficiency Notice has the meaning specified in Section 4.4.

Interest Receipts has the meaning specified in Section 4.2.

Item, when used with respect to any Collateral, ~~Eligible Collateral, New Acquisition Collateral, Above Par Collateral, SBA Collateral or CMBS Collateral~~, means all asset-backed securities with the same CUSIP or other unique identifying number that are included in such Collateral, ~~Eligible Collateral, New Acquisition Collateral, Above Par Collateral, SBA Collateral or CMBS Collateral, as the case may be.~~

Legacy CMBS Collateral means CMBS Collateral that is not Newly Issued CMBS Collateral.

Lender means Federal Reserve Bank of New York, in its capacity as lender of Loans hereunder, and its successors and assigns.

Lender Voting Instructions has the meaning specified in Section 11.2(i).

Lending Agreement means this Agreement, each Final Confirmation, each Letter of Agreement executed or furnished to Lender by any Primary Dealer, and any other agreement or document executed by or on behalf of any Borrower in connection with this Agreement (other than a Customer Agreement), in each case as the same may be amended, supplemented or otherwise modified from time to time.

Letter of Agreement means each Letter of Agreement, substantially in the form found in Appendix 1, delivered by each Primary Dealer party hereto.

LIBOR means, for any Loan Accrual Period with respect to any Floating Rate LIBOR Loan, the rate per annum for one-month deposits in Dollars which appears on the Bloomberg Screen BTMM Page under the heading "LIBOR FIX BBAM" as of 11:00 a.m., London time, on the second Business Day preceding the first day of such Loan Accrual Period (or, in the case of the initial Loan Accrual Period for any Floating Rate LIBOR Loan, as of 11:00 a.m., London time, on the applicable Loan Subscription Date); *provided*, that if such rate does not appear on the Bloomberg Screen BTMM Page, "LIBOR" shall be the interest rate per annum determined by Administrator (on the basis of quotes from two or more major international banks) to be representative of the rates per annum at which one-month deposits in Dollars are offered by major international banks to other major international banks in the London interbank market as of the second Business Day preceding the first day of such Loan Accrual Period (or, in the case of the initial Loan Accrual Period, as of the applicable Loan Subscription Date).

LIBOR Margin means, with respect to each Floating Rate LIBOR Loan made on the same Loan Closing Date, the interest margin over LIBOR (denominated in basis points), announced by Lender in advance of such Loan Closing Date and set forth in the TALF Standing Loan Facility Procedures, applicable to Floating Rate LIBOR Loans to be made under TALF on such Loan Closing Date.

Loan means a loan made by Lender to a Borrower, through its Applicable Primary Dealer, pursuant to this Agreement.

Loan Accrual Date, with respect to any Loan, means the 15th day of each calendar month (or if such day is not a Business Day, the next following Business Day); *provided*, that the initial Loan Accrual Date with respect to each Loan shall occur in the calendar month following the calendar month in which such Loan is made.

Loan Accrual Period means, with respect to each Loan, initially the period from and including the Applicable Loan Closing Date to but excluding the first Loan Accrual Date after the Applicable Loan Closing Date, and thereafter each subsequent period from and including a Loan Accrual Date to but excluding the next Loan Accrual Date.

Loan Closing Date means each date on which Loans are made by Lender to a Borrower pursuant to this Agreement.

Loan Repayment Amount means the outstanding principal amount of a Loan, plus all accrued and unpaid interest thereon.

Loan Request has the meaning specified in Section 3.2.

Loan Subscription Date means each date on which subscriptions for Loans to be made on the next scheduled Loan Closing Date are required to be delivered to Lender, as announced by Lender from time to time in accordance with the TALF Standing Loan Facility Procedures.

[Market Intermediary means, with respect to an Item of Legacy CMBS Collateral that is intended to secure any Loan, the United States registered broker-dealer from which the applicable Borrower directly acquired such Item of Legacy CMBS Collateral on or before the applicable Loan Subscription Date.](#)

Market Price, with respect to any Item of Collateral at any time, means the market price of such Item of Collateral, expressed as a percentage of par, determined by the Custodian (x) in the case of New Acquisition Collateral, to be the price to be paid by the Eligible Borrower for such New Acquisition Collateral set forth on the Sales Confirmation and reported to Custodian by the Applicable Primary Dealer or (y) otherwise, on the basis of the pricing information reported to it by customary pricing services (*provided*, that Custodian shall not rely on any such pricing information if it determines in good faith that such pricing information is representative only of market conditions prevailing more than four weeks prior to the date on which such pricing information was reported to it). If pricing information with respect to an Item of Collateral is not available to Custodian pursuant to the preceding sentence (or if Custodian shall not rely on such pricing information pursuant to the proviso to the preceding sentence), Custodian shall use its reasonable best efforts to secure price quotations ("**Broker Price Quotations**") from at least three broker-dealers with respect to such Item of Collateral, and the Market Price thereof shall be deemed to be the arithmetic average of the Broker

Price Quotations received. If pricing information with respect to an Item of Collateral is not available to Custodian pursuant to either of the preceding sentences (or if the Broker Price Quotations diverge to such an extent that Custodian determines in good faith that one or more of such Broker Price Quotations may not accurately reflect the market price of such Item of Collateral because such Broker Price Quotation(s) diverge substantially from the other Broker Price Quotations), then the Market Price thereof shall be determined in good faith by Custodian in consultation with Lender. Notwithstanding the foregoing or anything to the contrary in the Lending Agreement, the Market Price of an Item of Collateral shall not exceed 100% of par unless a Required Monthly Amortization Amount is applicable to such Item of Collateral; *provided* that in no event shall the Market Price of an Item of Collateral exceed 110% of par. All determinations of Market Price [in accordance with this paragraph](#) shall be conclusive absent manifest error.

[Notwithstanding the foregoing, for purposes of this Agreement, the Market Price at any time of any Item of Legacy CMBS Collateral securing any Loan shall be the lesser of \(x\) the price \(as a percentage of par\) paid therefor by the applicable Borrower set forth on the applicable Sales Confirmation delivered pursuant to the first paragraph of Section 3.3 and \(y\) the market price \(as a percentage of par\) thereof as determined by Lender in its sole discretion as of the applicable Loan Subscription Date; *provided*, that the Market Price of any Item of Legacy CMBS Collateral shall not exceed 100%.](#)

Market Value, with respect to any Item of Collateral at any time, means the product of (x) the outstanding principal amount thereof multiplied by (y) the Market Price thereof.

Master TALF Collateral Account means the omnibus account at Custodian, in the name of Lender, established for the purposes set forth in this Agreement.

Maturity Date has the meaning specified in Section 5.1.

Monthly Collateral Interest Income Amount has the meaning specified in Section 4.3.

Monthly Collateral Principal Amount has the meaning specified in Section 5.2.

Monthly Interest Deficiency Amount, with respect to any Loan for any Loan Accrual Period, means the sum of (i) the excess, if any, for all Items of Collateral securing such Loan, of (x) the amount of interest expected to be received thereon (based on the stated terms of each such Item of Collateral as of the date such Collateral was pledged hereunder) over (y) the Monthly Collateral Interest Income Amount with respect thereto, plus (ii) the cumulative amount of all Monthly Interest Deficiency Amounts accrued in prior months (as such amounts may be adjusted pursuant to the proviso to Section 5.3).

Monthly Interest Shortfall Amount, with respect to any Loan for any Loan Accrual Period, means the excess, if any, of (x) the Monthly Loan Interest Expense Amount over (y) the Monthly Collateral Interest Income Amount.

Monthly Interest Timing Difference Amount, with respect to any Loan for any Loan Accrual Period, means the excess, if any, of (x) the Monthly Interest Shortfall Amount over (y) the Monthly Interest Deficiency Amount.

Monthly Loan Interest Expense Amount has the meaning specified in Section 4.1.

~~**New Acquisition Collateral** has the meaning specified in Section 3.5(d).~~

New Acquisition Collateral means Expected ABS Collateral that will be acquired by the applicable Borrower on the applicable Loan Closing Date using the proceeds of a Loan. It is understood and agreed that Legacy CMBS Collateral may not be New Acquisition Collateral.

Newly Issued CMBS Collateral means commercial mortgage-backed pass through securities issued on or after January 1, 2009.

Obligation, whether now existing or hereafter incurred, means, with respect to any Loan:

- (i) the Loan Repayment Amount;
- (ii) any expense Lender, Administrator, Custodian or their respective designee(s) may incur to:
 - a. enforce the Lending Agreement against such Borrower in respect of such Loan or Lender's security interest in Collateral securing such Loan (including, without limitation, taxes, reasonable attorney's fees and expenses of sale), or
 - b. collect any or all of the foregoing; and
- (iii) all other amounts payable under the Lending Agreement by the Borrower of such Loan in respect of such Loan.

Offering Materials has the meaning specified in Section 3.2.

Other Closing Amounts means, with respect to any Item of New Acquisition Collateral, all amounts (if any) in respect of (x) accrued interest thereon and (y) the excess, if any, of (i) the price to be paid in respect of the principal amount thereof over (ii) the Market Value thereof.

Payment Date means the Business Day following each Determination Date.

Permitted Loan and Collateral Transfer means the simultaneous assignment of a Loan and sale of the Collateral securing same to an Eligible Borrower in a transaction consented to by Lender.

Person means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture or other entity of whatever nature.

Primary Dealer means each financial institution appearing from time to time on the Federal Reserve Bank of New York's list of "Primary Government Securities Dealers Reporting to the Government Securities Dealers Statistics Unit of the Federal Reserve Bank of New York" that is a party to this Agreement from time to time, individually and as agent for its Applicable Borrowers.

Primary Dealer Delivered Collateral means any New Acquisition Collateral that is being acquired by the Borrower of the Loan to be secured thereby through the broker-dealer that is such Borrower's Applicable Primary Dealer with respect to such Loan (such determination to be based on the information set forth in the applicable Loan Request).

Primary Dealer Receiving Notice has the meaning specified in Section 3.5.

Prime Rate means, for any Loan Accrual Period with respect to any Floating Rate Prime Rate Loan, the arithmetic average of the H.15 Prime Rate for each day during the period from and including the first day of such Loan Accrual Period to and including the last day of such Loan Accrual Period; *provided* that for purposes of determining such arithmetic average, the H.15 Prime Rate for the last day of such period shall be deemed to be the same as the H.15 Prime Rate for the second-to-last day of such period.

Prime Rate Margin means, with respect to each Floating Rate Prime Rate Loan made on the same Loan Closing Date, the interest margin below the Prime Rate (denominated in basis points), announced by Lender in advance of such Loan Closing Date and set forth in the TALF Standing Loan Facility Procedures, applicable to Floating Rate Prime Rate Loans to be made under TALF on such Loan Closing Date.

Principal Receipts has the meaning specified in Section 5.2.

Pro Rata Basis has the meaning specified in Section 8.2.

Put Option Agreement means the agreement between Lender and TALF LLC, pursuant to which Lender shall have the option to sell or assign from time to time, and TALF LLC shall have the obligation to purchase from Lender from time to time, (x) Collateral and (y) Lender's interest in Loans.

Redemption Option has the meaning specified in Section ~~5.3~~5.3-1.

Related Parties means, with respect to any specified Person, such Person's Affiliates and the respective directors, officers, employees, agents, attorneys, accountants, and other advisors, and controlling persons of such Person and such Person's Affiliates.

Required Monthly Amortization Amount, for any Loan Accrual Period with respect to any Loan the Collateral for which includes one or more Items of Above Par Collateral, means the sum of the required monthly amortization amounts (if any) for each such Item of Above Par Collateral, determined in accordance with the TALF Standing Loan Facility Procedures.

Restricted Prepayment Period, with respect to any Loan, means the period beginning on and including each Loan Accrual Date through and including the following Payment Date.

Sales Confirmation, ~~means (i)~~ with respect to any Item of New Acquisition Collateral, ~~means~~ a customary sales confirmation generated by the broker-dealer through which such Item of New Acquisition Collateral has been purchased, ~~that~~ and (ii) with respect to any Item of Legacy CMBS Collateral, a customary sales confirmation in respect of the purchase by the applicable Borrower of such Item of

Legacy CMBS Collateral generated by the applicable Market Intermediary, and that (A) in each case shall include the price paid or to be paid by the applicable Borrower in respect of the principal amount thereof on the date of closing of such purchase transaction and (B) in the case of a Sales Confirmation with respect to any Item of Legacy CMBS Collateral, shall include evidence that the settlement date of the purchase referred to in clause (ii) is on or before the applicable Loan Subscription Date.

SBA Collateral means securities that are fully guaranteed as to principal and interest by the U.S. Small Business Administration.

SBA Collateral Undertaking means, with respect to any Item of SBA Collateral or proposed SBA Collateral other than Development Company Participation Certificates, an undertaking, addressed to Lender and TALF LLC and delivered to Lender by the pool assemblers with respect to the transaction pursuant to which such SBA Collateral has been or will be issued, in the form set forth in the TALF Standing Loan Facility Procedures.

SBA Pool Certificates means SBA Collateral backed by loans made pursuant to Section 7(a) of the Small Business Act.

Stated Maturity Date, with respect to any Loan, means the third anniversary of the Applicable Loan Closing Date; *provided* that, solely in the case of a Loan secured by SBA Collateral, Student Loan Collateral or CMBS Collateral, if the applicable Loan Request indicates that the loan term of such Loan shall be 5 years, the Stated Maturity Date of such Loan shall be the fifth anniversary of the Applicable Loan Closing Date.

Student Loan Collateral means securities backed by (i) FFELP Loans or (ii) private student loans.

Surrendered Collateral has the meaning specified in Section 13.1.

TALF Disbursement Account means, with respect to each Primary Dealer, the account of such Primary Dealer specified in its Letter of Agreement, it being understood that each Primary Dealer (x) shall be entitled to specify only one TALF Disbursement Account and (y) may, from time to time, by written notice to Administrator, change its TALF Disbursement Account.

TALF LLC means TALF LLC, a Delaware limited liability company.

TALF Standing Loan Facility means the loan facility made available to Eligible Borrowers pursuant to this Agreement and in accordance with the TALF Standing Loan Facility Procedures.

TALF Standing Loan Facility Procedures means the terms, conditions, procedures and other information with respect to the TALF Standing Loan Facility and the Loans to be made available pursuant to the Lending Agreement, including, but not limited to, Eligibility Criteria, Classes of Collateral, Haircut Percentages, interest rates applicable to Loans, Loan Subscription Dates and scheduled Loan Closing Dates, published from time to time by Lender and posted to the TALF Website.

TALF Website means the web site maintained by Lender available at <http://www.ny.frb.org/markets/talf.html>.

UCC means the Uniform Commercial Code as in effect from time to time in the State of New York.

The following terms are used herein as defined in Articles 8 and 9 of the UCC: account, chattel paper, control, deposit account, documents, entitlement holder, equipment, financial assets, financing statement, general intangibles, instruments, inventory, investment property, proceeds, record, securities account and securities intermediary.

3.0 LOANS

- 3.1. On each Loan Subscription Date, not later than the time specified by Lender (such time to be posted to the TALF Website in advance of such Loan Subscription Date), each Primary Dealer may submit to Lender, through secure email to the email address specified by Lender from time to time, a request for Loans on behalf of each Applicable Borrower proposing to borrow Loans on the next scheduled Loan Closing Date (an “**Initial Loan Request**”). Each Initial Loan Request shall be in the form specified by Lender from time to time and shall set forth the information required to be set forth therein in accordance with the TALF Standing Loan Facility Procedures, on an aggregate basis for all Applicable Borrowers. Lender shall promptly provide Custodian with the information contained in each such Initial Loan Request.

Notwithstanding the foregoing, a Primary Dealer shall not be permitted to submit an Initial Loan Request unless (x) it has previously delivered to Custodian a copy of the Letter of Agreement pursuant to which it became a party hereto and (y) in the case of a Loan to be secured by [Newly Issued](#) CMBS Collateral and with respect to each such Item of [Newly Issued](#) CMBS Collateral, the following documents shall have been delivered to Lender and Custodian at or before the stated times: (1) not later than 5:00 p.m. on the seventh Business Day ~~(or, solely in the case of the June 2009 subscription for Loans to be secured by CMBS Collateral, the fifth Business Day)~~ before the applicable Loan Subscription Date, the Offering Materials (as defined below) (which may be in preliminary form to the extent Offering Materials in final form are not then available), (2) not later than 5:00 p.m. on the fifth Business Day ~~(or, solely in the case of the June 2009 subscription for Loans to be secured by CMBS Collateral, the third Business Day)~~ prior to the applicable Loan Subscription Date, an AUP Report (TALF) and an AUP Report (Industry) relating to the Offering Materials with respect to such Item of Collateral and (3) not later than the Business Day after each further supplement to the Offering Materials with respect to such Item of Collateral is furnished to prospective investors, each such supplement, together with an AUP Report (TALF) and an update to the earlier AUP Report (Industry); *provided*, that all supplements, AUP Reports (TALF) and AUP Reports (Industry) with respect to each Item of [Newly Issued](#) CMBS Collateral shall be delivered not later than 5:00 p.m. on the second Business Day prior to the applicable Loan Subscription Date (and the Offering Materials with respect to any such Item of [Newly Issued](#) CMBS Collateral may not be supplemented thereafter (other than with respect to final pricing information)).

- 3.2. On each Loan Subscription Date, not later than one hour after the time when the subscription period closes as specified by Lender (such time to be posted to the TALF Website in advance of such Loan Subscription Date), each Primary Dealer that has submitted an Initial Loan Request shall submit to Custodian a follow-up loan request that shall include information on a borrower-by-borrower basis, in the form attached hereto as Appendix 3A or, in the case of a Loan to be secured by CMBS Collateral, Appendix 3B (each such request, a “**Loan Request**”). On each

Loan Subscription Date, each such Primary Dealer shall deliver to Custodian the preliminary and/or final prospectus, offering memorandum or other comparable offering materials (including any supplements thereto and any updates thereof) (collectively, “**Offering Materials**”) to the extent then available to it (and to the extent not previously delivered, including as required by the second paragraph of Section 3.1), with respect to all assets that its Applicable Borrowers desire to have included in the Collateral for the requested Loans; *provided*, that Offering Materials shall not be required to be delivered with respect to SBA Pool Certificates and Legacy CMBS Collateral.

- 3.3. Not later than 5:00 p.m. on the fifth Business Day prior to each scheduled Loan Closing Date, in the case of a Loan to be secured by Legacy CMBS Collateral and with respect to each such Item of Legacy CMBS Collateral, the Applicable Primary Dealer shall deliver to Lender and Custodian the Sales Confirmation with respect thereto.

Not later than 5:00 p.m. on the fourth Business Day (or in the case of a Loan to be secured by CMBS Collateral, the fifth Business Day) prior to each scheduled Loan Closing Date, each Primary Dealer that has submitted a Loan Request (x) shall, with respect to any New Acquisition Collateral, submit to Custodian a Sales Confirmation and (y) may submit to Custodian a revised Loan Request reflecting any reductions in the loan requests of its Applicable Borrowers that reflect any reductions in the amount of New Acquisition Collateral such Borrowers expect to be able to deliver on the Loan Closing Date as a result of the actual allocations of such New Acquisition Collateral by the underwriters thereof. Failure to deliver a Sales Confirmation with respect to New Acquisition Collateral shall result in such assets being ineligible for inclusion in the Collateral.

With respect to Expected ABS Collateral that is not CMBS Collateral, it is understood and agreed that the Eligible Collateral Schedule (~~as defined below~~) shall not include any assets with respect to which (i) Offering Materials shall not have been delivered to Custodian (*provided*, that Offering Materials shall not be required to be delivered with respect to SBA Pool Certificates), (ii) an Auditor Attestation and an Indemnity Undertaking shall not have been delivered to Lender (*provided*, that neither an Auditor Attestation nor an Indemnity Undertaking shall be required to be delivered with respect to SBA Collateral) and (iii) in the case of SBA Collateral other than Development Company Participation Certificates, an SBA Collateral Undertaking shall not have been delivered to Lender, in each case prior to 5:00 p.m. on the fourth Business Day prior to the scheduled Loan Closing Date. Each Applicable Primary Dealer shall deliver or cause to be delivered to Custodian all such Offering Materials promptly upon such Offering Materials becoming available to it.

With respect to Expected ABS Collateral that is Newly Issued CMBS Collateral, it is understood and agreed that the Eligible Collateral Schedule (~~as defined below~~) shall not include any assets with respect to which (i) Offering Materials, AUP Reports (TALF) and AUP Reports (Industry) have not been delivered to Lender and Custodian in accordance with the subclauses (1) and (2) of the second paragraph of Section 3.1 or (ii) an Indemnity Undertaking has not been delivered prior to 5:00 p.m. on the fifth Business Day prior to the scheduled Loan Closing Date.

With respect to Expected ABS Collateral that is Legacy CMBS Collateral, it is understood and agreed that the Eligible Collateral Schedule shall not include any

[assets with respect to which the Sales Confirmation has not been delivered to Lender and Custodian in accordance with the first paragraph of this Section 3.3.](#)

- 3.4. (1) Not later than 12:00 noon on the third Business Day prior to each scheduled Loan Closing Date, each Primary Dealer that has submitted a Loan Request shall, with respect to any New Acquisition Collateral, submit to Custodian to the extent not previously submitted to Custodian pursuant to Section 3.2, the final prospectus and final offering memorandum (or other Offering Materials in final form), and, in the case of each Item of New Acquisition Collateral that is [Newly Issued](#) CMBS Collateral, each such Primary Dealer shall cause to be submitted to Lender and Custodian the related AUP Report (Industry) as soon as reasonably practicable thereafter and (2) not later than 5:00 p.m. on the third Business Day prior to each scheduled Loan Closing Date, Custodian shall deliver to Lender a schedule showing, for each Borrower and each requested Loan, the Eligible Collateral that such Borrower intends to deliver as Collateral therefor (an “**Eligible Collateral Schedule**”). Such Eligible Collateral Schedule shall, at a minimum, include (i) the CUSIP or other unique identifying number of each Item of Eligible Collateral, (ii) a description thereof, (iii) the principal amount thereof, (iv) the Haircut Amount applicable thereto as of such Business Day and (v) the Collateral Value applicable thereto as of such Business Day.
- 3.5. On the second Business Day prior to each scheduled Loan Closing Date, Lender shall instruct Custodian to deliver to each Primary Dealer that submitted a Loan Request with respect to such scheduled Loan Closing Date a confirmation (each such notice, a “**Confirmation**”, each Primary Dealer receiving such Confirmation, a “**Primary Dealer Receiving Notice**”) setting forth:
- (a) the amount of requested Loans that will be made to the Applicable Borrowers of such Primary Dealer Receiving Notice (on both an aggregate and an individual Borrower basis) on such scheduled Loan Closing Date;
 - (b) the Fixed Rate, LIBOR Margin ~~or~~, Fed Funds [Margin or Prime Rate](#) Margin that will be applicable to such requested Loans (as applicable) and the loan term;
 - (c) the amount and description (including CUSIP number) of the assets that will be accepted as Eligible Collateral as collateral security for each such requested Loan on such scheduled Loan Closing Date (the “**Expected ABS Collateral**”), and the Market Value and the Collateral Value thereof as of the preceding Business Day;
 - (d) with respect to any ~~Expected ABS Collateral that will be acquired by the applicable Borrower on the Loan Closing Date (“New Acquisition Collateral”)~~, the Haircut Amount and all Other Closing Amounts with respect to such New Acquisition Collateral; and
 - (e) the amount of the Administrative Fee required to be paid with respect to each requested Loan.

Each such Confirmation shall reflect any adjustments required by Lender and communicated to Custodian (such communication to be made via submission of an excel spreadsheet reflecting any such adjustments), and shall be delivered by Custodian to the applicable Primary Dealer Receiving Notice by 5:00 p.m. (or such later time as Custodian and Lender shall agree) on the second Business Day prior to each scheduled Loan Closing Date.

- 3.6. On each Loan Closing Date (or, in the case of clause (e), within one Business Day thereafter):
- (a) each Primary Dealer Receiving Notice shall deliver to Custodian, by 8:30 a.m.:
 - (i) with respect to all New Acquisition Collateral (other than Primary Dealer Delivered Collateral) expected to be delivered by its Applicable Borrowers, funds equal to the (x) the Haircut Amount attributable thereto and (y) all Other Closing Amounts with respect thereto (which amounts shall be received in the Master TALF Collateral Account); and
 - (ii) the Administrative Fee with respect to each Loan to be made to each of its Applicable Borrowers (which amount shall be received in the Master TALF Collateral Account);
 - (b) prior to the cut-off time for DTC settlement, each Primary Dealer Receiving Notice shall deliver to Custodian (or shall cause to be delivered to Custodian, including through the facilities of DTC), the Expected ABS Collateral;
 - (c) subject to the provisions of Section 3.7, Lender shall make available in the Master TALF Collateral Account the aggregate principal amount of all Loans expected to be made to the Applicable Borrowers of each Primary Dealer Receiving Notice on such Loan Closing Date;
 - (d) all Expected ABS Collateral actually received by Custodian shall be settled to the Master TALF Collateral Account against payment therefor; and
 - (e) Custodian shall re-deliver to each Primary Dealer Receiving Notice the Confirmation, as revised by Custodian to reflect all Loans disbursed, and all Collateral delivered and accepted, on such Loan Closing Date (as revised, a "**Final Confirmation**"). Such Final Confirmation shall represent the definitive record (absent manifest error) of all such Loans made and Collateral pledged as security therefor.
- 3.7. No Loan shall be made unless at the time of making of such Loan:
- (a) the Borrower thereof is an Eligible Borrower,
 - (b) the principal amount thereof is at least \$10,000,000,
 - (c) such Loan is secured (x) by Eligible Collateral having an aggregate Collateral Value (measured as of the third Business Day prior to the Applicable Loan Closing Date) at least equal to the principal amount of such Loan and (y) unless such Loan is secured by SBA Pool Certificates, by a single Item of Eligible Collateral,
 - (d) each Item of Eligible Collateral securing such Loan has a Market Value (measured as of the third Business Day prior to the Applicable Loan Closing Date) of at least \$10,000,000 (or, in the case of an Item of Eligible Collateral that is an SBA Pool Certificate, at least \$1,000,000),

- (e) in the case of a Fixed Rate Loan, the Eligible Collateral securing same bears interest at a fixed rate (or, in the case of CMBS Collateral, a fixed rate or a rate that varies based on the weighted average of the underlying fixed mortgage rates),
- (f) in the case of a Floating Rate Loan, (i) the Eligible Collateral securing same bears interest at a floating rate ~~and~~, (ii) if such Floating Rate Loan is a Floating Rate Fed Funds Loan, the Eligible Collateral securing same consists solely of SBA Pool Certificates and (iii) if such Floating Rate Loan is a Floating Rate Prime Rate Loan, the Eligible Collateral securing same consists solely of securities that (x) are backed by private student loans and (y) bear interest at a rate that is set by reference to a published or quoted prime rate of interest,
- (g) the Administrative Fee with respect to such Loan has been received in the Master TALF Collateral Account, and
- (h) with respect to each Item of New Acquisition Collateral (other than Primary Dealer Delivered Collateral) securing such Loan, the Haircut Amount and all Other Closing Amounts have been received in the Master TALF Collateral Account.

Prior to authorizing the making of any Loan, Custodian, for the sole benefit of Lender, shall have confirmed, on the basis of its independent review, that each of the conditions set forth in this Section 3.7 have been satisfied (other than the condition set forth in Section 3.7(a)); *provided*, that notwithstanding anything to the contrary set forth herein or in the TALF Standing Loan Facility Procedures, (x) Custodian's confirmation of whether or not any Collateral constitutes "Eligible Collateral" shall be made without regard to the requirement (to the extent such requirement is applicable) that, with respect to any Borrower, Eligible Collateral not include any assets backed by underlying credit exposures that were originated or securitized by such Borrower or any of its Affiliates and (y) Custodian shall not be required to confirm whether or not any of the Eligibility Criteria are satisfied with respect to Legacy CMBS Collateral other than (i) the CMBS Ratings Eligibility Requirements and (ii) the requirement that Legacy CMBS Collateral be cleared through DTC.

3.8. Notwithstanding (x) any receipt by Lender of an Initial Loan Request or Loan Request or (y) any delivery of a Confirmation, (i) Lender shall be under no obligation to make any Loan or to accept as Collateral any assets appearing on an Eligible Collateral Schedule or any Expected ABS Collateral, and (ii) Lender's approval of a request for a Loan shall be evidenced by, and the Loan shall be deemed made at the time of, the settlement of each Loan and the delivery of the Collateral therefor in accordance with Section 3.6. Upon the closing of a Loan and the transfer of funds in accordance with Section 3.6, none of Custodian, Administrator or Lender shall have any obligation to the Borrower to ensure that any such funds are applied in any manner whatsoever, and, upon any such transfer made at the direction of the Applicable Primary Dealer, none of Custodian, Administrator or Lender shall have any obligation to account to any Borrower for any funds so transferred.

3.9. Administrator shall maintain accurate books and records, on both an aggregate and individual Borrower basis (as well as by Primary Dealer), of each Loan made hereunder, including (i) the Borrower and principal amount thereof, (ii) accrued interest thereon and all payments made in respect thereof, (iii) all payments and

prepayments of principal thereof and (iv) the Loan Repayment Amount with respect thereto. Such records shall be conclusive absent manifest error.

- 3.10. It is understood and agreed that a Primary Dealer may also be a Borrower hereunder [\(to the extent that such Primary Dealer satisfies all conditions of being an Eligible Borrower with respect to the applicable Loan\)](#).
- 3.11. The parties hereto acknowledge and agree that the procedures set forth in Sections 3.1 through 3.6 may be changed by Lender from time to time. Any such changes shall be communicated to the parties hereto via posting to the TALF Website, and, once posted, shall supersede the procedures set forth herein with respect to subsequent Loan Subscription Dates and Loan Closing Dates.
- 3.12. If a Loan is not made by Lender on the scheduled Loan Closing Date, Lender shall instruct Custodian to return to the applicable Primary Dealer, for further distribution to the applicable Borrower, as soon as practicable after such scheduled Loan Closing Date (x) any Haircut Amount and any Other Closing Amounts with respect to such requested Loan that had been received in the Master TALF Collateral Account, (y) each Item of Eligible Collateral that would have secured such Loan that has been received in the Master TALF Collateral Account and (z) only if the conditions set forth in paragraphs (a) through (f) of Section 3.7 were (or would have been) satisfied on such Loan Closing Date and each Item of Eligible Collateral that would have secured such Loan had been received in the Master TALF Collateral Account on or prior to such Loan Closing Date, the Administrative Fee with respect to such requested Loan; *provided* that none of Custodian, Administrator or Lender shall have any obligation to account to any Borrower for any such amounts or Collateral so transferred to a Borrower's Applicable Primary Dealer.

4.0 INTEREST ON LOANS

- 4.1. Subject to Section 4.9, interest on the outstanding principal amount of each Loan shall accrue during each Loan Accrual Period on a daily basis on the outstanding principal amount of such Loan as of each day, at a rate per annum equal to (x) in the case of a Fixed Rate Loan, the Fixed Rate applicable thereto, and (y) in the case of a Floating Rate Loan, the Floating Rate applicable thereto, and shall be payable in arrears on each Payment Date. Interest shall be computed on the basis of 365 days in a year and actual days elapsed (the amount of interest accrued during each Loan Accrual Period, the **"Monthly Loan Interest Expense Amount"**; *provided*, that for all purposes of this Agreement the Monthly Loan Interest Expense Amount with respect to any Loan shall also include the Required Monthly Amortization Amount with respect thereto).
- 4.2. All amounts paid on the Collateral in respect of interest ~~earned thereon~~ [and any other distributions \(excluding Principal Receipts\)](#) ("**Interest Receipts**") shall be received in the Master TALF Collateral Account. Pending the application thereof pursuant to Section ~~4.3, 4.3 or Section 5.3-2~~, Custodian shall invest such Interest Receipts on behalf of Lender as directed by Lender. Each Borrower hereby acknowledges and agrees that (x) the earnings from any such investments shall be for the account of Lender and (y) neither Lender nor Custodian (nor Administrator) shall be obligated to account to any Borrower for any amount other than the Interest Receipts.
- 4.3. ~~On~~ [Subject to Section 5.3-2, on](#) each Payment Date and with respect to each Loan, all Interest Receipts in respect of the Collateral securing such Loan that have been

received on or before the immediately preceding Determination Date and that are for credit to the Loan Accrual Period most recently completed (such amount, the “**Monthly Collateral Interest Income Amount**”) shall be applied as follows:

First, to the payment of the Monthly Loan Interest Expense Amount (including the Required Monthly Amortization Amount, but only after the balance of the Monthly Loan Interest Expense Amount has been paid in full), via the transfer of such amount to Lender (or its designee) in accordance with Lender’s instructions to Custodian, and

Then, subject to clause (y) of Section 18.15, any excess shall be transferred to the TALF Disbursement Account of the Borrower’s Applicable Primary Dealer; *provided, however*, that with respect to ~~Five-Year Loans~~(x) [any Three-Year Fixed Rate Loan secured by Legacy CMBS Collateral and \(y\) any Five Year Loan](#), the amount of such excess that shall be so transferred will be limited as specified in the TALF Standing Loan Facility Procedures (and any excess not so transferred shall be applied by Custodian to repay the principal amount of the applicable Loan).

Amounts applied to the payment of the Required Monthly Amortization Amount pursuant to clause *First* above shall reduce the outstanding principal amount of the applicable Loan. [Required Monthly Amortization Amounts included in Monthly Loan Interest Expense Amount shall be disregarded for purposes of determining “net carry” under the TALF Standing Loan Facility Procedures and any related limitation described in the proviso to clause *Then* above.](#)

- 4.4. If, with respect to any Loan as of any Loan Accrual Date, a Monthly Interest Shortfall Amount and a Monthly Interest Deficiency Amount exist, Administrator shall promptly notify the Applicable Primary Dealer of the existence of such Monthly Interest Deficiency Amount (an “**Interest Deficiency Notice**”). Such Interest Deficiency Notice shall include (i) the name of the applicable Borrower, (ii) the Monthly Interest Deficiency Amount and (iii) a demand for payment thereof. Each Primary Dealer shall immediately forward all Interest Deficiency Notices to the appropriate Borrowers.
- 4.5. The unpaid amount of each Monthly Interest Shortfall Amount shall be added to the Monthly Loan Interest Expense Amount for the following Loan Accrual Period.
- 4.6. Each Primary Dealer shall disburse all amounts transferred to its TALF Disbursement Account pursuant to Section 4.3 in accordance with the instructions of the Borrowers of the applicable Loans; *provided* that none of Custodian, Administrator or Lender shall have any obligation to ensure that amounts transferred to a TALF Disbursement Account are applied in any manner whatsoever, and, upon their transfer to a TALF Disbursement Account in accordance with Section 4.3, none of Custodian, Administrator or Lender shall have any obligation to account to any Borrower for any funds so transferred.
- 4.7. Each Borrower hereby agrees that it shall have no right to receive its portion of any Monthly Collateral Interest Income Amount except as set forth in Section 4.3.
- 4.8. All calculations in respect of Monthly Loan Interest Expense Amounts, Monthly Collateral Interest Income Amounts, Monthly Interest Shortfall Amounts, Monthly Interest Deficiency Amounts, Monthly Interest Timing Difference Amounts and

Required Monthly Amortization Amounts shall be made by Administrator and shall be conclusive absent manifest error.

- 4.9. At all times during which Lender has a right of recourse against a Borrower with respect to a Loan Repayment Amount pursuant to the proviso to the first paragraph of Section 17.0 (other than pursuant to clause (4) thereof unless the Maturity Date shall have occurred), the outstanding principal amount of such Loan and any accrued and unpaid interest thereon shall bear interest at a rate per annum equal to the rate per annum otherwise applicable to such Loan plus 2%.

5.0 REPAYMENT AND PREPAYMENT OF PRINCIPAL

- 5.1. Each Borrower promises to pay the Loan Repayment Amount with respect to each Loan made to it, in actually and finally collected funds, on such Loan's Stated Maturity Date or, if earlier, the date on which all of the Collateral securing such Loan has matured (or, in either case, if such date falls on a day that is not a Business Day, on the next Business Day) (such date, the "**Maturity Date**" of such Loan).
- 5.2. All principal payments made on Collateral ("**Principal Receipts**") shall be received in the Master TALF Collateral Account. Pending the application thereof pursuant to Section 5.3, Custodian shall invest such amounts on behalf of Lender as directed by Lender. Each Borrower hereby acknowledges and agrees that (x) the earnings from any such investments shall be for the account of Lender and (y) neither Lender nor Custodian (nor Administrator) shall be obligated to account to any Borrower for any amount other than the Principal Receipts.
- 5.3. On each Payment Date and with respect to each Loan, all Principal Receipts with respect to each Item of Collateral securing such Loan that have been received on or before the immediately preceding Determination Date and that are for credit to the Loan Accrual Period most recently completed (each Item of Collateral's "**Monthly Collateral Principal Amount**") shall be applied as follows (subject to ~~the last two paragraphs of this Section 5.3~~ [Sections 5.3-1 and 5.3-2](#)):
- (a) an amount equal to the product of (x) the Haircut Percentage with respect to such Item of Collateral (as of the time the applicable Loan was made) multiplied by (y) the Monthly Collateral Principal Amount paid on such Item of Collateral shall be transferred to the TALF Disbursement Account of the Borrower's Applicable Primary Dealer; and
 - (b) the balance of such Monthly Collateral Principal Amount shall be applied by Custodian to repay the principal amount of the applicable Loan via the transfer of same to Lender in accordance with Lender's instructions to Custodian;

provided, that if (x) a Monthly Interest Deficiency Amount with respect to a Loan exists as of the immediately preceding Determination Date and (y) any amount would otherwise be distributed pursuant to clause (a) with respect to such Loan, (i) the amount to be distributed pursuant to clause (a) shall be reduced (but not below zero) by the amount of such Monthly Interest Deficiency Amount (the amount of such reduction, the "**Borrower Principal Reduction Amount**"), (ii) such Monthly Interest Deficiency Amount shall be reduced by the Borrower Principal Reduction Amount and (iii) the Borrower Principal Reduction Amount shall be applied to the payment of any unpaid portion of the Monthly Loan Interest Expense Amount with

respect to such Loan via the transfer of such amount to Lender (or its designee) in accordance with Lender's instructions to Custodian.

Notwithstanding the foregoing but subject to ~~the last two paragraphs of this Section 5.3, Sections 5.3-1 and 5.3-2,~~ on each date on which any Principal Receipt is received, the principal balance of the applicable Loan shall be reduced by an amount equal to the product of (x) the difference between (A) 100% and (B) the Haircut Percentage with respect to the applicable Item of Collateral (as of the time the applicable Loan was made) multiplied by (y) the amount of such Principal Receipt.

5.3-1 With respect to each Loan that is secured by one or more Items of Collateral with respect to which the issuer of such Collateral has the option (the "**Redemption Option**") to redeem the outstanding principal amount thereof at a price less than the par value thereof (or, in the case of an Item of Above Par Collateral, at a price less than the par value thereof plus the sum of all Required Monthly Amortization Amounts required to be made with respect to the applicable Loan for the remaining Average Life of the Item of Collateral calculated using the relevant TALF prepayment assumption), 100% of the Principal Receipts resulting from the exercise of any such Redemption Option shall be applied to repay the principal amount of, and any Monthly Interest Deficiency Amount with respect to, such Loan.

5.3-2 Notwithstanding anything in this Agreement to the contrary, if, as of any Determination Date for a Loan:

(a) an ABS Event of Default in respect of an Item of Collateral securing such Loan has occurred and is continuing, or

(b) a CMBS Credit Support Depletion Event in respect of an Item of CMBS Collateral securing such Loan has occurred and is continuing, or

~~With respect to each Loan that is secured by one or more Items of Collateral as to which (c) _____ an Early Amortization Event in respect of an Item of Collateral securing such Loan has occurred and is continuing (and, in the case of an Early Amortization Event that has occurred and is continuing during the period that would otherwise be the revolving period, such revolving period has not been recommenced with the consent of the securityholders in accordance with the related ~~indenture, pooling and servicing agreement, trust agreement or any operative document that governs the application of collections), 100% of the Principal Receipts from such Item(s) of Collateral shall be applied to repay the principal amount of, and any Monthly Interest Deficiency Amount with respect to, such Loan; Governing Documents).~~~~

then (in any such event) the sum of (x) all Interest Receipts received in respect of such Item of Collateral on or before such Determination Date that are for credit to the related Loan Accrual Period most recently completed and (y) all Principal Receipts received in respect of such Collateral on or before such Determination Date that are for credit to the related Loan Accrual Period most recently completed shall be applied on the related Payment Date in the following order of priority:

First, to pay the Monthly Loan Interest Expense Amount (but only to the extent not paid by the application of Interest Receipts from other items of Collateral securing such Loan pursuant to Section 4.3) for such Payment Date via the transfer of such amount to Lender (or its designee) in accordance with Lender's instructions to Custodian, until such Monthly Loan Interest Expense Amount has been paid in full;

Second, to repay the principal of such Loan until the principal balance of such Loan has been repaid in full; and

Third, any amounts remaining shall be transferred to the TALF Disbursement Account of the Borrower's Applicable Primary Dealer;

~~provided, that Custodian shall not be required to effect the foregoing adjustment with respect to any Item of Collateral for any Loan Accrual Period~~ to the application of such Interest Receipts and Principal Receipts provided for in this sentence to the extent that Custodian shall not have received written notice of the occurrence of the such ABS Event of Default, such CMBS Credit Support Depletion Event or such Early Amortization Event, as the case may be, from Lender, or from the trustee or the issuer of such Item of Collateral, or from the Lender, by 12:00 noon on the Business Day immediately preceding the Payment Date that next occurs after the last day of such Loan Accrual Period such Payment Date. Custodian shall be permitted to rely on any such notice reasonably believed to be authentic.

As between the applicable Borrower, on the one hand, and Lender and Custodian on the other, any determination by Lender or Custodian that an ABS Event of Default, a CMBS Credit Support Depletion Event or an Early Amortization Event has occurred or is continuing shall be conclusive and binding for purposes of this Agreement absent manifest error. In making any such determination, Lender and Custodian shall be entitled to rely on, without limitation, notices and reports delivered pursuant to the applicable Governing Documents.

- 5.4. Each Primary Dealer shall disburse all amounts transferred to its TALF Disbursement Account pursuant to Section 5.3 in accordance with the instructions of the Borrowers of the applicable Loans; *provided* that none of Custodian, Administrator or Lender shall have any obligation to ensure that amounts transferred to a TALF Disbursement Account are applied in any manner whatsoever, and, upon their transfer to a TALF Disbursement Account in accordance with Section 5.3, none of Custodian, Administrator or Lender shall have any obligation to account to any Borrower for any funds so transferred.
- 5.5. In addition to (and not in limitation of) the foregoing, the Loan Repayment Amount with respect to any Loan of a Borrower shall become immediately due and payable:
- (a) upon the occurrence of any Collateral Enforcement Event (A) described in clause (iv) of the definition thereof or (B) described in clause (v) of the definition thereof (but, in the case of this clause (B), only to the extent relating to such Loan); or
 - (b) at Lender's option, upon the occurrence of any other Collateral Enforcement Event to the extent relating to such Loan.

- 5.6. A Borrower may optionally prepay the outstanding principal amount of any Loan, at any time, in whole or in part, without penalty, upon not less than four Business Days advance written notice thereof (in the form attached hereto as Appendix 6) by the Applicable Primary Dealer to Custodian and Administrator (with copies to Lender); *provided*, that (x) no optional prepayment shall be permitted to be made during any Restricted Prepayment Period and (y) if necessary to accommodate operational or administrative issues, Custodian may, by notice to the Applicable Primary Dealer, extend the date on which such prepayment shall be permitted to be consummated to a later date. All optional prepayments shall be accompanied by accrued but unpaid interest on the principal amount prepaid.
- 5.7. With respect to any partial prepayment of a Loan pursuant to Section 5.6, Custodian shall, within three Business Days of receiving notice thereof, advise the Applicable Primary Dealer of the amount of such partial prepayment that will be permitted, it being understood that Custodian may, in its reasonable discretion, reduce (but not increase) the amount of such partial prepayment to correspond to the amount of Collateral securing such Loan that is to be released on a Pro Rata Basis in accordance with Section 8.2.
- 5.8. All payments required to be made by a Borrower pursuant to Section 5.1 or 5.5 or that a Borrower elects to make pursuant to Section 5.6 shall be made via wire transfer of same day funds by such Borrower's Applicable Primary Dealer (or, in the case of payment pursuant to Section 5.6, by such other Person as is otherwise specified in the applicable notice of prepayment) to the Master TALF Collateral Account. All amounts credited to the Master TALF Collateral Account pursuant to this Section 5.8 shall be transferred by Custodian to Lender in accordance with Lender's instructions to Custodian.
- 5.9. The provisions of the preceding Sections 5.1, 5.3 and 5.5 are subject in all respects to Section 17.0.
- 5.10. Each Borrower hereby agrees that, except as set forth in Section 5.3, it shall have no right to receive its portion of any Monthly Collateral Principal Amount until payment in full of the applicable Loan Repayment Amount and any other Obligations secured by the applicable Collateral.

6.0 GRANT OF SECURITY INTEREST

Each Borrower, for value received and in consideration of Lender permitting such Borrower to obtain each Loan made to it hereunder, hereby transfers and assigns to Lender and grants to Lender a continuing security interest in and lien on the Collateral for such Loan, as collateral security for the timely and complete payment and performance when due (whether at stated maturity, by acceleration or otherwise) of all of the Obligations with respect to such Loan. For avoidance of doubt, the Collateral pledged by a Borrower to secure its Obligations with respect to any Loan shall not secure any Obligations of such Borrower with respect to any other Loan.

7.0 COLLATERAL

- 7.1. All assets that are intended to be pledged as Collateral for Loans shall be held in or credited to the Master TALF Collateral Account.
- 7.2. Pursuant to the Collateral Custody and Administration Agreement, Custodian shall keep accurate and current records of (x) each Loan made hereunder and the

accrued interest thereon and (y) the principal amount of and accrued interest on each Item of Collateral pledged by each Borrower reflecting all changes thereto occurring from time to time as a result of:

- (a) the receipt by Custodian of any amounts in respect of principal of ~~or~~ interest on or any other amounts in respect of any Item of Collateral, and any disbursements thereof, in each case in accordance with the provisions of this Agreement,
- (b) the release, in whole or in part, of the security interest in any Item of Collateral pursuant to the terms of this Agreement,
- (c) any transfer of all or any portion of the beneficial interest in any Item of Collateral to another Borrower pursuant to a Permitted Loan and Collateral Transfer,
- (d) Collateral Surrenders,
- (e) the enforcement of Lender's remedies with respect to any Item of Collateral in accordance with Section 14.1 or 14.2, or
- (f) otherwise.

Such records shall be conclusive absent manifest error.

7.3. Each Borrower hereby:

- (a) acknowledges that all of the Collateral securing each Loan made to it will at all times be held in the Master TALF Collateral Account, which shall be under the control of Lender (or Custodian for the benefit of Lender) and as to which Lender shall be the entitlement holder, and consents to the foregoing;
- (b) authorizes Lender or Custodian at any time to file or record in any filing office in any jurisdiction which Lender determines appropriate to perfect the security interests set forth hereunder, financing statements, and any amendments or continuation statements related thereto without the signature of such Borrower therein, and each Borrower shall, promptly at the request of Lender or Custodian, provide any additional information required by Article 9 of the UCC, as in effect in any relevant jurisdiction, for the sufficiency or acceptability of any financing statement; and
- (c) authorizes Lender and Custodian, at any time, to take any and all other actions that may be necessary or, in their sole discretion, desirable to obtain, preserve, perfect or enforce Lender's security interest in the Collateral.

8.0 RELEASE OF COLLATERAL

- 8.1. Lender's lien on and security interest in any Collateral shall be released upon confirmation to Lender by Administrator that the Loan Repayment Amount and all other Obligations secured by such Collateral (other than contingent obligations as to which no claim has been made) have been unconditionally paid in full. Upon any such release, Custodian shall transfer the released Collateral from the Master TALF Collateral Account pursuant to the instructions of the Applicable Primary

Dealer; *provided*, that upon such transfer, none of Custodian, Administrator or Lender shall have any further liability or obligation to the applicable Borrower with respect to such Collateral.

- 8.2. Upon the effectiveness of any partial prepayment of the principal amount of any Loan pursuant to Section 5.6, Lender's lien on, and security interest in, each Item of Collateral securing such Loan shall be released on a Pro Rata Basis. Upon any such release, Custodian shall transfer the released Collateral from the Master TALF Collateral Account pursuant to the instructions of the Applicable Primary Dealer; *provided*, that upon such transfer, none of Custodian, Administrator or Lender shall have any further liability or obligation to the applicable Borrower with respect to such Collateral.

"Pro Rata Basis", with respect to any release of Collateral in connection with the partial prepayment of any Loan, means that the Applicable Percentage of each Item of Collateral securing such Loan (subject to adjustment by Custodian in its reasonable discretion to reflect any minimum denominations applicable to any Collateral) shall be released from Lender's lien.

"Applicable Percentage" means the fraction, expressed as a percentage, equal to (x) the principal amount of the Loan prepaid divided by (y) the principal amount of such Loan outstanding immediately prior to such prepayment.

Administrator shall provide prompt written notice to Lender and the Applicable Primary Dealer of the effectiveness of any release of Collateral pursuant to Section 8.1 or 8.2.

9.0 MAINTENANCE OF LENDING AGREEMENT

Each Primary Dealer and each Borrower shall maintain continuously as official records a copy of the Lending Agreement.

10.0 REPRESENTATIONS AND WARRANTIES

- 10.1. Each Borrower, each Primary Dealer, Administrator and Custodian represents and warrants, which representations and warranties shall be deemed to be continuing (x) in the case of a Borrower, so long as it has any Obligation outstanding, (y) in the case of Primary Dealer, so long as any of its Applicable Borrowers have any Obligations outstanding and (z) in the case of Administrator and Custodian, for so long as this Agreement remains in effect, that:

- (a) (i) it has the power and authority, and the legal right, to make, deliver and perform its obligations under the Lending Agreement; (ii) it has taken all necessary organizational action to authorize the execution, delivery and performance of the Lending Agreement; (iii) no consent or authorization of, filing with, notice to or other act by or in respect of, any governmental authority or any other person is required in connection with the execution, delivery, performance, validity or enforceability of the Lending Agreement; and (iv) it (or, in the case of a Borrower, its Applicable Primary Dealer, as duly authorized agent of such Borrower with respect to each Loan made to it through such Applicable Primary Dealer) has duly executed and delivered the Lending Agreement;
- (b) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and is not in violation of any laws or regulations in any respect which could have any material adverse effect

upon the validity, performance or enforceability of any of the terms of the Lending Agreement;

- (c) the Lending Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law;
- (d) no statement or information contained in the Lending Agreement or any other document, certificate, or statement furnished by it to any other party hereto for use in connection with the transactions contemplated by the Lending Agreement, on and as of the date when furnished, is untrue as to any material fact or omits any material fact necessary to make the same not misleading; *provided*, that with respect to statements or other information contained in Offering Materials, the foregoing [representation](#) shall not be applicable ~~only~~ to [any Person other than](#) a Primary Dealer that acted as an underwriter of the securities offered thereby; ~~and~~
- (e) in the case of a Borrower:
 - (i) with respect to each Loan made to (or, in the case of a Permitted Loan and Collateral Transfer, assumed by) such Borrower, such Borrower is an Eligible Borrower (determined on the basis of the criteria applicable to "Eligible Borrowers" in effect at the time such Loan was made or assumed);
 - (ii) such Borrower has duly authorized each of its Applicable Primary Dealers to execute and deliver the Lending Agreement on its behalf, has the power to so authorize each such Primary Dealer, and has taken all necessary action to authorize such execution and delivery by each such Primary Dealer;
 - (iii) such Borrower will, at the time of the making of any Loan, have rights in the Collateral securing such Loan sufficient to grant an enforceable security interest to Lender, and its rights in such Collateral are free of any assertion of a property right that would adversely affect Lender's right to such Collateral, including but not limited to any claim, lien, security interest, encumbrance, preference or priority arrangement or restriction on the transfer or pledge of such Collateral (an "**Adverse Claim**"), except as created by the Lending Agreement;
 - (iv) (A) the Lending Agreement is effective to create in favor of Lender a legal, valid, and enforceable security interest in the Collateral securing such Borrower's Loans and (B) so long as such Collateral is held in or credited to the Master TALF Collateral Account and Lender (or Custodian for the benefit of Lender) has control of such Collateral, such security interest shall constitute a fully and validly perfected lien on, and security interest in, all rights, title and interest of such Borrower in such Collateral, subject to no prior Adverse Claims of others; ~~and~~

(v) at the time any Loan is made to such Borrower (or, in the case of a Permitted Loan and Collateral Transfer, at the time any Loan is assumed by such Borrower) all of the Collateral securing such Loan is, to such Borrower's knowledge based on its review of the applicable Offering Materials and servicer and/or trustee reports (if applicable) (or, in the case of Collateral consisting of SBA Pool Certificates, to such Borrower's knowledge), Eligible Collateral; provided, that:

(A) for purposes determining the accuracy of the foregoing representation and warranty, such Borrower shall be deemed to have knowledge of the identity of each of its Affiliates, and

(B) in the case of a Permitted Loan and Collateral Transfer with respect to any Item of Legacy CMBS Collateral, for the purposes of determining the accuracy of the foregoing representation and warranty, whether or not the CMBS Ratings Eligibility Requirements are satisfied shall be determined on the basis of the credit ratings in effect as of the date of effectiveness of such Permitted Loan and Collateral Transfer, notwithstanding anything to the contrary contained in the definition of "CMBS Ratings Eligibility Requirements" or in the TALF Standing Loan Facility Procedures;

(vi) with respect to each Item of Legacy CMBS Collateral securing any Loan made to such Borrower:

(1) such Borrower is not an Affiliate of the applicable Market Intermediary and, to the best of such Borrower's knowledge after diligent inquiry, none of such Borrower's Affiliates directly sold all or any portion of such Item of Legacy CMBS Collateral to such Market Intermediary.

(2) such Borrower's agreement to purchase such Item of Legacy CMBS Collateral was made on an arm's-length basis on or after the Loan Subscription Date for Legacy CMBS Collateral that occurred in the calendar month preceding the applicable Loan Closing Date (or, if the applicable Loan Closing Date is in July 2009, on or after July 2, 2009);

(3) the conditions to the settlement of such Borrower's purchase of such Item of Legacy CMBS Collateral did not and do not include the performance of any material obligation on the part of either party, except for the payment of the purchase price and delivery of such Item of Legacy CMBS Collateral, and the terms of the purchase are to the effect that such Borrower shall, upon such payment, acquire all of the right, title and interest in and to such Item of Legacy CMBS Collateral and assume the risks of the ownership thereof;

(4) the purchase price payable by such Borrower for such Item of Legacy CMBS Collateral consists only of cash in the amount stated on the applicable Sales Confirmation;

(5) such Borrower has not received and is not entitled to receive, directly or indirectly, from any Person any payment, forgiveness of debt, loan, extension of credit or other consideration or financial accommodation in exchange for and in consideration of such Borrower's agreement to purchase such Item of Legacy CMBS Collateral; and such purchase is not being made in satisfaction of a pre-existing obligation of such Borrower or any of its Affiliates to purchase or repurchase such Item of Legacy CMBS Collateral;

(6) from and after the applicable Loan Closing Date, such Borrower will not have any right or obligation under any hedging arrangement (other than an interest rate or basis swap), insurance arrangement, credit default swap, total return swap, loss or gain sharing arrangement, reimbursement agreement or indemnity agreement that references such Item of Legacy CMBS Collateral or the same class of security as such Item of Legacy CMBS Collateral (other than a credit default swap transaction that references an index of commercial mortgage-backed pass-through securities that includes such same class of security, if the weighting of such class of security in such index is not more than five percent (5%) of the aggregate notional balance of such index) and under which the applicable Market Intermediary or, to the actual knowledge of such Borrower, any of its Affiliates is the counterparty; and such Borrower shall not knowingly enter into any such arrangement with any Person that, to such Borrower's actual knowledge, directly sold all or any portion of such Item of Legacy CMBS Collateral to such Market Intermediary;

- 10.2. Each Primary Dealer further represents and warrants, which representations and warranties shall be deemed to be continuing so long as any of its Applicable Borrowers have any Obligations outstanding, that:
- (a) it has provided each Applicable Borrower with a copy of the Lending Agreement;
 - (b) each Applicable Borrower has duly authorized such Primary Dealer to execute and deliver the Lending Agreement on its behalf, has the power to so authorize such Primary Dealer and to enter into the Loans contemplated by the Lending Agreement and otherwise perform its obligations pursuant to the Lending Agreement, and has taken all necessary action to authorize such execution and delivery by such Primary Dealer and such performance by it;
 - (c) such Primary Dealer has, or will have at the time of transfer of any Collateral of an Applicable Borrower to Custodian, the right to grant on behalf of such Applicable Borrower a security interest therein subject to the terms and conditions of the Lending Agreement;
 - (d) (1) such Primary Dealer is subject to a rule implementing 31 U.S.C. § 5318(h) and maintains an anti-money laundering program compliant with the requirements of the USA PATRIOT Act (the "**Act**") and the rules thereunder; (2) such Primary Dealer is regulated by a Federal functional

regulator as that term is defined under 31 C.F.R. § 103.120(a)(2); (3) such Primary Dealer has implemented a customer identification program compliant with Section 326 of the Act that enables such Primary Dealer to form a reasonable belief that it knows the true identity of its customers (including each Applicable Borrower), including procedures to obtain information from and verify the identity of customers, maintain records of the information used to verify identity, determine whether any customer appears on any government list of known or suspected terrorists or terrorist organizations, and provide customers with adequate notice that the institution is requesting information to verify their identities, and has implemented risk-based due diligence procedures designed to identify high risk customers; (4) such Primary Dealer is in compliance with its anti-money laundering program and its customer identification program in all material respects; and (5) such Primary Dealer will certify annually to Lender that it has implemented its anti-money laundering program and that it (or its agent) will perform all aspects of its customer identification program with respect to each Applicable Borrower;

- (e) such Primary Dealer has entered into a Customer Agreement with each Applicable Borrower, and such Customer Agreement is in full force and effect;
- (f) all written information (other than Offering Materials) delivered by it to Lender, Administrator or Custodian pursuant to this Agreement is accurate and complete in all material respects and there has been no material change in such information since the date such information was delivered that has not been communicated in writing to Lender, Administrator and Custodian;
- (g) at the time any Loan is made to or assumed by an Applicable Borrower, such Applicable Borrower is an Eligible Borrower; and
- (h) at the time any Loan is made to or assumed by an Applicable Borrower, all of the Collateral securing such Loan [other than any such Collateral that is Legacy CMBS Collateral](#) is Eligible Collateral.

Each Primary Dealer acknowledges that any Loans made to its Applicable Borrowers will be made in reliance on the representations and warranties contained in this Section 10.2, and consents to such reliance.

11.0 COVENANTS

11.1. Each Borrower, each Primary Dealer, Custodian and Administrator, covenants that so long as the Lending Agreement remains in effect or any Obligation remains outstanding ((x) in the case of a Primary Dealer, with respect to any Applicable Borrower and (y) in the case of a Borrower, with respect to such Borrower):

- (a) it shall provide to Lender any reports or statements that Lender reasonably requests; and
- (b) it shall permit any officers, employees, agents, representatives designated by the Lender (including any representative of the Board) to visit, audit and inspect the financial records of such Person during normal business hours from time to time as requested and to make extracts from and copies of such financial records, and permit any such Person to discuss the affairs,

finances and condition of such Person with the directors, officers and employees thereof and independent accountants therefor; *provided*, that in the case of a Borrower, the foregoing obligations shall be limited to the extent relating to such Borrower's Loans and Collateral or its obligations under the Lending Agreement.

- 11.2. Each Borrower covenants that so long as the Lending Agreement remains in effect or any of its Obligations remain outstanding:
- (a) except for the security interest herein granted or otherwise permitted by Lender, it shall have rights in the Collateral securing each of its Loans free from any Adverse Claim, and shall maintain the security interest created hereby as a perfected security interest and shall take all actions necessary or prudent to defend against Adverse Claims;
 - (b) except pursuant to a Collateral Surrender, a Permitted Loan and Collateral Transfer or as otherwise permitted by Lender, it shall not (i) sell or otherwise dispose of, ~~or offer to sell or otherwise dispose of,~~ any Collateral securing any of its Loans or any interest therein, or (ii) pledge, mortgage, or create, or permit the existence of any right of any person in or claim to, any such Collateral other than the security interest granted herein;
 - (c) it shall pay promptly when due (or before they become delinquent) all taxes, assessments, governmental charges, and levies imposed upon the Collateral securing each of its Loans or any income or profits therefrom, and any claims of any kind against such Collateral;
 - (d) upon Lender's request, it shall promptly reimburse Lender for any expense incurred by Lender with respect to enforcing the Lending Agreement and the Collateral securing any of its Loans, including perfecting or maintaining perfection of Lender's security interest in such Collateral, and assembling, transporting, safekeeping, managing, inspecting, or liquidating such Collateral, whether such Collateral is held by Lender, Custodian or such Borrower;
 - (e) it shall not perform any act with respect to any of the Collateral securing any of its Loans that would impair Lender's rights or interests therein, nor will it fail to perform any act that would reasonably be expected to prevent such impairment or that is necessary to preserve Lender's rights;
 - (f) at Lender's request, it shall promptly execute any agreement or document and take any other actions that Lender reasonably deems necessary or desirable to carry out the terms of the Lending Agreement, including but not limited to the execution and delivery of any document Lender deems necessary to grant, perfect or otherwise protect Lender's security interest in the Collateral securing any of its Loans;
 - (g) it shall continuously maintain the Lending Agreement in the same manner as it maintains all other official corporate records;
 - (h) it shall promptly notify Lender, Custodian and its Applicable Primary Dealer of the occurrence of any Collateral Enforcement Event of which it has knowledge; and

- (i) ~~(1) it shall not exercise, nor shall it refrain from exercising, any voting, consent or waiver rights with respect to (x) each Item of CMBS Collateral securing any of its Loans and (y) an Early Amortization Event in respect of each Item of Collateral securing any of its Loans (including, without limitation declaring or waiving, any such right with respect to the declaration or waiver of an Early Amortization Event or recommending the recommencement of a revolving period under any Item of Collateral) without the prior written consent of Lender (which consent may be withheld or conditioned in Lender's sole discretion), and it shall promptly deliver to Lender notice of any of the foregoing~~ (2) it shall promptly notify the Applicable Primary Dealer upon becoming aware that its vote, consent or waiver is being sought as to any matter with respect to any Item of Collateral securing any of its Loans, including a description of such matter and any prescribed response period under the terms thereof with respect thereto and (3) it shall promptly comply with any instruction it receives from Lender (including any instruction given by Lender through the Applicable Primary Dealer) with respect to any such vote, consent or waiver ("Lender Voting Instructions").
- 11.3. Each Primary Dealer covenants that so long as the Lending Agreement remains in effect or any Obligation remains outstanding or any other amount is owing to Lender under the Lending Agreement, in each case with respect to any Applicable Borrower:
- (a) such Primary Dealer shall provide Lender, Custodian and Administrator with all information in its possession concerning each such Applicable Borrower (including its address for service of process and all "know-your-customer" information and assessments) as they shall reasonably request in connection with this Agreement;
- (b) if requested by Lender, Custodian or Administrator, such Primary Dealer shall provide each of the foregoing with market price information with respect to all Collateral of its Applicable Borrowers, to the extent such information is available to it;
- (c) ~~with respect to any voting right that an Applicable Borrower shall have with respect to any action to be taken by the issuer of any of such Applicable Borrower's Collateral, such Primary Dealer shall provide written notification to Custodian of such Applicable Borrower's instructions promptly after receipt of such instructions from such Applicable Borrower (it being understood that Custodian shall not be required to exercise any such voting right unless it shall have received such instructions not later than 12:00 noon on the second Business Day prior to the last scheduled date to act (or such earlier date or time as Custodian may notify the Applicable Primary Dealer)); provided, that this Section 11.3(e) shall be subject in all respects to Sections 11.2(i) and 14.1(d);~~ such Primary Dealer shall promptly forward (1) to Lender all communications received by it from its Applicable Borrowers pursuant to Section 11.2(i) and (2) to the relevant Applicable Borrowers all Lender Voting Instructions received by it from Lender;
- (d) such Primary Dealer shall promptly notify Lender and Custodian of the occurrence of any Collateral Enforcement Event with respect to any of its Applicable Borrowers of which it has knowledge;

- (e) (i) prior to the date on which it submits its first Initial Loan Request hereunder, such Primary Dealer shall establish and implement policies and procedures designed to identify the existence of any actual or potential conflict of interest that may exist or arise as a result of its intended activities under the TALF program (the “**Procedures**”) and shall thereafter maintain the Procedures in effect and (ii) such Primary Dealer shall take appropriate remedial actions to address any conflicts of interest identified pursuant to the Procedures;
- (f) if (i) such Primary Dealer, any of its Affiliates, or any other Person that has been formed or sponsored by, or is Controlled or managed by or otherwise affiliated with, such Primary Dealer or any of its Affiliates, intends to be a Borrower (any of the foregoing, a “**Specified Potential Borrower**”), (ii) such Primary Dealer is the Applicable Primary Dealer with respect to such Specified Potential Borrower and (iii) such Primary Dealer or any of its Affiliates have acted as underwriter of any of the securities proposed or to be proposed as Collateral for any Loan to be made to such Specified Potential Borrower, such Primary Dealer shall submit to Lender a conflict of interest identification and remediation plan designed to address actual or potential conflicts of interest with respect to the foregoing (a “**Plan**”); *provided*, that a Primary Dealer shall not be required to submit more than one Plan pursuant to this Section 11.3(f) unless otherwise requested by Lender.
- (g) such Primary Dealer shall not submit an Initial Loan Request or a Loan Request on behalf of an Applicable Borrower if such Primary Dealer has knowledge that Lender has previously rejected a request to borrow any loan under TALF (other than a rejection based solely on Lender’s discretion to reject any Collateral that was to have secured any such loan) from (i) such Applicable Borrower or (ii) any holder of any ownership interest in such Applicable Borrower (each an “**Applicable Person**”) (whether or not such Applicable Borrower or Applicable Person satisfies the criteria applicable to Eligible Borrowers set forth in the TALF Standing Loan Facility Procedures),

11.4. Custodian covenants that so long as the Lending Agreement remains in effect:

- (a) with respect to all Collateral consisting of securities, Custodian shall forward to the Applicable Primary Dealer with respect to each applicable Loan all information or documents that it may receive from an issuer thereof which, in its reasonable determination, are intended for the beneficial owner of such securities, including notices with respect to any rights the applicable beneficial holder may have and the date or dates such rights must be exercised; *provided*, that this Section 11.4(a) shall be subject in all respects to Section 14.1(d); and
- (b) with respect to all Collateral consisting of securities, it shall promptly advise Lender and the Applicable Primary Dealer with respect to each applicable Loan upon being notified of the partial redemption, partial payment or other action affecting less than the entire class of all such securities and, if any such securities are held by Custodian, directly or indirectly, or by DTC, as part of a fungible mass, Custodian or DTC may select the securities to participate in such partial redemption, partial payment or other action in any non-discriminatory manner that it customarily uses to make such selection.

Absent actual receipt by Custodian at Custodian's offices of the information and notices described above, Custodian shall have no liability for failing to so notify the Applicable Primary Dealer.

12.0 WAIVER OF IMMUNITY; SUBMISSION TO JURISDICTION; VENUE; ETC.

- 12.1. If any Borrower or its property is now, or in the future becomes, entitled to any immunity, whether characterized as sovereign or otherwise (including, without limitation, immunity from set-off, from service of process, from jurisdiction of any court or tribunal, from attachment in aid of execution, from attachment prior to the entry of a judgment, or from execution upon a judgment) in any legal proceeding in Federal or State courts in the United States of America, or in the courts of the country in which such Borrower principally conducts its business, then such Borrower expressly and irrevocably waives, to the maximum extent permitted by law, any such immunity. To the extent any Borrower receives any such entitlement in the future, such Borrower shall promptly notify Lender of such entitlement.
- 12.2. Each of the parties hereby irrevocably and unconditionally: (a) submits for itself and its property in any legal action or proceeding relating to the Lending Agreement, or for recognition and enforcement of any judgment in respect thereof, to the exclusive jurisdiction of the courts of the United States for the Southern District of New York, and appellate courts thereof; *provided that*, notwithstanding the foregoing, if there is no basis for federal jurisdiction in respect of any such legal action or proceeding or recognition and enforcement action, then each party submits for itself and its property in any such legal action or proceeding or recognition and enforcement action to the exclusive jurisdiction of the courts of the State of New York located in the Borough of Manhattan in New York City, and appellate courts thereof; (b) consents that any such action or proceeding may be brought only in such courts and waives, to the maximum extent not prohibited by law, any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same; (c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid return receipt requested, (i) in the case of a Primary Dealer, to its address set forth in its Letter of Agreement, (ii) in the case of a Borrower, to the address of any Applicable Primary Dealer through which it has borrowed any Loan (as set forth in such Primary Dealer's Letter of Agreement) and (iii) in the case of Custodian or Administrator, to its address set forth on the signature page hereto, or, in each case, at such other address of which the other parties hereto and the Lender shall have been notified pursuant thereto; (d) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law; (e) agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in another jurisdiction by suit on the judgment or in any other matter provided by law; and (f) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding any special, indirect, exemplary, punitive or consequential damages of any kind whatsoever (including for lost profits).

13.0 COLLATERAL SURRENDER

- 13.1. Each Borrower shall have the continuing right (a "**Collateral Surrender Right**"), exercisable at any time with respect to any Loan to it then outstanding (and whether or not any Collateral Enforcement Event has occurred and is continuing), to surrender all of the Collateral securing such Loan (the "**Surrendered**

Collateral") to Lender in full satisfaction of the Obligations with respect to such Loan (a "**Collateral Surrender**"). Lender hereby agrees, subject to any right of recourse it may have against the applicable Borrower pursuant to the proviso to Section 17.0, to accept such Surrendered Collateral in full payment, discharge and satisfaction of such Obligations.

- 13.2. To exercise a Collateral Surrender Right, a Primary Dealer shall deliver to Custodian (with a copy to Lender and Administrator) a Collateral Surrender and Acceptance Notice, executed by such Primary Dealer on behalf of its Applicable Borrower.
- 13.3. On the date designated by Lender and notified to the applicable Primary Dealer (such date to be not more than ten Business Days after the receipt of the applicable Collateral Surrender Notice or such later date as Lender shall determine in its discretion) and subject to confirmation by Custodian and Administrator of the accuracy of the information contained in such Collateral Surrender Notice (by reference to the information contained in their books and records):
 - (a) to the extent permitted under applicable law, the Collateral Surrender shall become effective without any further action on the part of any Person;
 - (b) the applicable Loan Repayment Amount shall be deemed to have been forever and fully paid, discharged and satisfied (subject, in all respects, to any right of recourse that Lender may have against the applicable Borrower pursuant to the proviso to Section 17.0);
 - (c) Lender shall accede to all right, title and interest of the applicable Borrower in the Surrendered Collateral; and
 - (d) Custodian shall transfer the Surrendered Collateral from the Master TALF Collateral Account as directed by Lender.
- 13.4. Administrator shall provide prompt written notice to Lender and the Applicable Primary Dealer of the effectiveness of any Collateral Surrender.

14.0 REMEDIES UPON COLLATERAL ENFORCEMENT EVENT

- 14.1. Upon the occurrence of, and at any time during the continuance of, a Collateral Enforcement Event with respect to a Borrower, Lender may pursue any of the following remedies, separately, successively, or concurrently:
 - (a) declare all of such Borrower's Loan Repayment Amounts and other Obligations to be immediately due and payable; *provided*, that all such Loan Repayment Amounts and other Obligations shall automatically become due and payable upon the occurrence of any Collateral Enforcement Event of the type described in clause (iv) of the definition thereof;
 - (b) take possession of any Collateral securing such Borrower's Loans not already in Custodian's possession, without demand and without legal process; and
 - (c) instruct Custodian to liquidate Collateral securing such Borrower's Loans (including pursuant to the Put Option Agreement) and apply the proceeds thereof to such Borrower's Obligations;

- (d) exercise the exclusive right, to the extent permitted by applicable law, to vote, to give consents, ratifications and waivers and to take any other action with respect to any Collateral securing such Borrower's Loans and the financial assets underlying such Collateral, with the same force and effect as if Lender were the absolute and sole owner thereof, and such Borrower will take all such action as Lender may reasonably request from time to time to give effect to such right; and
- (e) exercise (or instruct Custodian to exercise, on its behalf) any or all of its rights as a secured creditor pursuant to, and in accordance with, Article 9 of the UCC;

provided, that with respect to any Collateral Enforcement Event other than a Collateral Enforcement Event of the type described in clause (iv) of the definition thereof, Lender shall be permitted to exercise remedies only with respect to the applicable Loan(s) and the Collateral securing same.

14.2. If Lender exercises its rights in any Collateral upon a Collateral Enforcement Event:

- (a) Custodian (on behalf of Lender) may sell, assign, transfer, and deliver, at Lender's option, all or any part of such Collateral at private or public sale (including pursuant to the Put Option Agreement), at such prices as Lender may, in good faith, deem best, without advertisement, and each Borrower waives notice of the time and place of the sale, except any notice that is required by law and may not be waived;
- (b) Lender has no obligation to prepare such Collateral for sale, and Lender may sell such Collateral and disclaim any warranties without adversely affecting the commercial reasonableness of the sale;
- (c) Lender has no obligation to collect from any third party or to marshal any assets in favor of any Borrower to satisfy any Obligation; and
- (d) Lender may purchase any or all of such Collateral and pay for it by applying the purchase price to reduce the Loan Repayment Amounts and other Obligations secured by such Collateral.

14.3. Each Borrower agrees that all of the Collateral securing its Loans is of a kind or type that is customarily sold on a recognized market, as such phrase is used in Sections 9-610(c) and 9-611(d) of the UCC.

14.4. For the purpose of enabling it to exercise remedies pursuant to Section 14.1 or 14.2, each Borrower appoints Lender (and Custodian on behalf of Lender), with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such Borrower, to endorse, assign, transfer, and deliver Collateral to any party, and to take any action deemed necessary or advisable by Lender or Custodian either to protect Lender's interests or exercise its rights under the Lending Agreement, including taking any action to perfect or maintain Lender's security interest (including but not limited to filing a financing statement). This power of attorney is coupled with an interest and as such is irrevocable and full power of substitution is granted to the assignee or holder. As attorney-in-fact, Lender (and Custodian on behalf of Lender) may take any lawful action to collect all sums due in connection with Collateral, Lender may release any Collateral, instruments or agreements securing or evidencing

Obligations as fully as each Borrower could do if acting for itself, and Lender (and Custodian on behalf of Lender) may take any action set forth in Section 7.3, but neither Lender nor Custodian has any obligation to take any such actions or any other action in respect of any Collateral.

- 14.5. The proceeds realized upon the sale or disposition of any Collateral, to the extent actually received in cash by Lender or Custodian, shall be applied toward satisfaction of the Obligations secured thereby. Lender shall apply such proceeds first to any fees, other charges, penalties, indemnities, and costs and expenses of, collection, or realizing on interests in such Collateral (including reasonable attorneys' fees), next to the unpaid principal balance and last to accrued but unpaid interest. Lender (or Custodian on behalf of Lender) will account to the applicable Borrower for any surplus amount realized upon such sale or other disposition.
- 14.6. No delay or failure by Lender (or Custodian on behalf of Lender) to exercise any right or remedy accruing upon a Collateral Enforcement Event shall impair any right or remedy, waive any default or operate as an acquiescence to the Collateral Enforcement Event, or affect any subsequent Collateral Enforcement Event of the same or of a different nature.
- 14.7. On complying with the provisions of the Lending Agreement and applicable law, Lender (and Custodian on behalf of Lender) is fully discharged from any liability or responsibility to any person regarding Collateral.

15.0 INDEMNIFICATION

- 15.1. Each Borrower shall indemnify Lender, Custodian and Administrator and their Related Parties (each, an "**Indemnified Party**") for any loss, claim, damage, liability, and expense (including, without limitation, reasonable attorneys' fees, court costs and expenses of litigation) in respect of such Borrower's Loans incurred by an Indemnified Party in the course of or arising out of the performance of the Lending Agreement, any action related to the Collateral securing such Borrower's Loans, or any action to which an Indemnified Party may become subject in connection with Lender's exercise, enforcement or preservation of any right or remedy granted to it under the Lending Agreement with respect to such Borrower's Loans or Collateral, except to the extent that such loss, claim, damage, liability, or expense results, in a final determination rendered by a court of competent jurisdiction, from the applicable Indemnified Party's gross negligence, willful misconduct or fraudulent actions; *provided*, that the foregoing indemnity shall be inapplicable to losses suffered (i) pursuant to Section 13.3 as a result of such Borrower's exercise of a Collateral Surrender Right or (ii) as a result of the application of the first paragraph of Section 17.0 to such Borrower's Obligations (but only to the extent Lender does not have a right of recourse against such Borrower pursuant to the proviso thereto).
- 15.2. Each Indemnified Party will give the applicable Borrower written notice of any claim that such Indemnified Party or any other person may have under this indemnity. No Borrower shall be liable for any claim that is compromised or settled by an Indemnified Party without such Borrower's prior written consent, *provided* that such Borrower responded promptly and in such Indemnified Party's judgment, adequately, to such Indemnified Party's notice of such claim. This indemnity remains an obligation of each Borrower notwithstanding termination of the Lending Agreement or payment in full of such Borrower's Loan Repayment Amounts, and is binding on each Borrower's successors and assigns. Upon written demand from

an Indemnified Party, each Borrower shall pay promptly amounts owed under this indemnity, free and clear of any right of offset, counterclaim or other deduction. If not promptly paid by a Borrower, such obligation becomes an Obligation of such Borrower secured under the Lending Agreement.

- 15.3. Each Indemnified Party's right to indemnification hereunder shall be enforceable against each Borrower directly, without any obligation to first proceed against any third party for whom such Indemnified Party may act, and irrespective of any rights or recourse that such Borrower may have against any such third party. This indemnity shall be a continuing obligation of Borrower notwithstanding the repayment in full of any Loan Repayment Amount or the termination of this Agreement.

16.0 CONCERNING ADMINISTRATOR AND CUSTODIAN

- 16.1. Administrator or Custodian ("**Agents**") shall not be liable to any Borrower or any Primary Dealer for any costs, expenses, damages, liabilities or claims, including reasonable fees of counsel incurred by any of them (collectively, "**Losses**"), resulting from its action or inaction in connection with this Agreement, including Losses which are incurred by reason of any action or inaction by any depositary, book-entry system, clearing corporation, issuer, originator, sponsor, or their successors or nominees, except for those Losses arising out of Agents' gross negligence, bad faith or willful misconduct as stated in a final determination rendered by a court of competent jurisdiction. Agents shall have no duties or responsibilities to any Borrower or any Primary Dealer except such duties and responsibilities as are specifically set forth in this Agreement, and no covenant or obligation shall be implied in this Agreement against Agents. Each Primary Dealer and each Borrower agree that this Agreement constitutes the entire Agreement with Agents in connection with the Loans. In no event shall Agents be liable to any Borrower or any Primary Dealer for special, indirect or consequential damages, or lost profits or loss of business, arising under or in connection with this Agreement. Agents may, with respect to questions of law, apply for and obtain the advice and opinion of counsel, and shall be fully protected with respect to anything done or omitted by it in good faith in conformity with such reasonable advice or opinion. Agents shall be under no obligation to take action to collect any amount payable on Collateral in default, or if payment is refused after due demand and presentment.
- 16.2. Agents shall not be required to risk or expend their own funds or otherwise incur any financial liability in the performance of any of their duties or in the exercise of any of their rights or powers hereunder if they shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not assured to it. Agents are not guaranteeing performance of or assuming any liability for the obligations of any Primary Dealer, any Borrower or Lender hereunder.
- 16.3. To the extent that this Agreement requires Agents to make any calculations based on information provided to them, Agents shall make such calculations upon receipt of such information, except to the extent that such information is manifestly incorrect and/or is not provided to Agents by the time specified in this Agreement and/or where relevant, is not substantially in the form set forth in this Agreement. If information is not provided to Agents by the time specified in this Agreement and, where relevant, in the form set out in this Agreement, or if such information is manifestly incorrect, Agents shall use reasonable efforts to make the necessary calculations and shall incur no liability hereunder for any consequence resulting from making such calculation. Agents shall be entitled to rely on any

representations, statements or information it receives from the parties hereto or their designee, legal counsel and independent accountants in connection with this Agreement (collectively, "**Statements**") and shall not be liable hereunder if Agents rely on Statements provided that such reliance is reasonable. Agents may rely on any notice, direction, instruction, instrument or document reasonably believed by them to be genuine and that appears to have been signed or presented in connection with this Agreement by an authorized person, and shall not be deemed to have notice of any fact or matter unless and until written notice thereof referencing this Agreement shall have been received by Agents at the notice address provided for under Agents' signature lines on the signature page hereof.

- 16.4. Agents shall be responsible for maintaining and preserving their operations, facilities and systems (including their computer and communication systems) in a manner consistent with commercial and supervisory standards prevalent in their industry. So long as Agents shall have complied with the foregoing maintenance and preservation requirements and provided that any delay or failure to take such action as may be required under this Agreement could not be prevented by the exercise of reasonable diligence by Agents, Agents shall not be responsible or liable for any failure or delay in the performance of their obligations under this Agreement arising out of or caused, directly or indirectly, by circumstances beyond their reasonable control, including without limitation, acts of God; earthquakes; fires; floods; wars; civil or military disturbances; sabotage; epidemics; riots; interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications service; accidents; labor disputes; acts of civil or military authority or governmental actions; it being understood that Agents shall use their best efforts to resume performance as soon as practicable under the circumstances. The foregoing shall not relieve Agents from using their reasonable best efforts to perform their obligations in a timely manner in accordance with the terms of this Agreement.
- 16.5. Agents shall be under no obligation to inquire into, and shall not be liable for, any Losses incurred by any Borrower or any Primary Dealer as a result of the receipt or acceptance of fraudulent, forged or invalid Collateral which otherwise is not freely transferable or deliverable without encumbrance in any relevant market.
- 16.6. Agents may enter into subcontracts, agreements and understandings with any of their Affiliates, whenever and on such terms and conditions as they deem necessary or appropriate to perform their services hereunder. No such subcontract, agreement or understanding shall discharge Agents from their obligations hereunder.
- 16.7. Agents may rely on data supplied by third parties, including generally recognized pricing information service (including dealers of securities) (collectively, "**Third Party Data**"). Agents are authorized to utilize Third Party Data in order to perform their valuation responsibilities hereunder, and each Primary Dealer and each Borrower agree to hold Agents harmless from and against any Losses incurred as a result of errors or omissions in Third Party Data. Third Party Data are obtained from sources that Agents believe to be reliable but are provided without any independent investigation by Agents. Agents do not represent or warrant that the Third Party Data are correct, complete or current. **AGENTS ARE NOT RESPONSIBLE FOR ANY RESULTS OBTAINED FROM THE USE OF OR RELIANCE UPON THIRD PARTY DATA.**

17.0 LIMITED RECOURSE

Notwithstanding anything to the contrary contained in the Lending Agreement, (x) the Obligations of each Borrower are solely the obligations of such Borrower and (y) with respect to any Loan, the Obligations shall be payable solely to the extent of funds received (i) by Custodian in respect of interest and other payments on and principal payments of the Collateral securing such Loan and (ii) as a result of the exercise of remedies with respect to the Collateral securing such Loan pursuant to Section 14.1 or 14.2; *provided* that the provisions of the preceding clause (y) shall be inapplicable to (1) all Obligations with respect to a Loan to the extent that the Borrower of such Loan is, at any time, not an Eligible Borrower (determined on the basis of the criteria applicable to “eligible borrowers” in effect at the time such Loan was borrowed), (2) all Obligations of a Borrower that arise as a result of the inaccuracy of any of the representations and warranties made by such Borrower in Section 10.1(c) or 10.1(e), (3) all Obligations with respect to a Loan that arise pursuant to Lender’s reimbursement and repayment rights set forth in Sections 18.14 and 18.15 and (4) all Obligations with respect to a Loan if a Collateral Surrender and Acceptance Notice with respect thereto shall not have been delivered to Custodian in accordance with Section 13.2 on or prior to the Maturity Date of such Loan.

No recourse shall be had for the payment of any amount owing in respect of any obligation of, or claim against, any Borrower arising out of or based upon the Lending Agreement against Custodian, Administrator, any Primary Dealer or any holder of any equity interests in or any Related Party thereof; *provided* that (i) recourse may be had against a Primary Dealer in respect of any failure by such Primary Dealer to perform any covenant or agreement undertaken by it in the Lending Agreement and any failure of any of the representations and warranties made by such Primary Dealer in the Lending Agreement to be true and correct in all material respects when made (but in the case of the representations and warranties in Sections 10.1(d)(with respect to information obtained by such Primary Dealer from third parties), 10.2(b), 10.2(c), 10.2(f) (with respect to information obtained by such Primary Dealer from third parties), 10.2(g) and 10.2(h), only if such Primary Dealer shall have failed to exercise reasonable care to confirm their accuracy) and (ii) the foregoing shall not relieve any such person or entity from any liability they might otherwise have as a result of gross negligence, willful misconduct or fraudulent actions taken or omissions by them.

The provisions of this Section shall survive the termination or expiration of this Agreement and, with respect to each Borrower, the payment in full of all of such Borrower’s Obligations.

18.0 MISCELLANEOUS

- 18.1. Lender is not obligated by the Lending Agreement or otherwise to make, increase, renew, or extend any Loan to any Borrower.
- 18.2. With respect to each Borrower, the amount of any Loan Repayment Amount and/or Obligation reflected on the books and records of the Custodian is presumptive evidence of the amounts due and owing by such Borrower to Lender.
- 18.3. Lender shall have no right to pledge or hypothecate any Collateral, and shall have no right to sell any Collateral except pursuant to Section 14.1 or 14.2 or except to the extent such Collateral has been surrendered to it pursuant to an effective Collateral Surrender.

- 18.4. The time zone prevailing in the State of New York shall be used to determine any deadline or other time hereunder or under the TALF Standing Loan Facility Procedures, including the time a Loan Repayment Amount or other Obligation is due and payable.
- 18.5. Each of Lender and Custodian may record telephone communications between Lender itself and each Primary Dealer and between Lender itself and each Borrower, and such recordings may be submitted in evidence to any court or in any proceeding for the purpose of establishing any matters pertinent to the Lending Agreement.
- 18.6. Lender's rights and remedies under the Lending Agreement are in addition to any others agreed to by any Borrower or that may exist at law or in equity.
- 18.7. Any provision of the Lending Agreement that is unenforceable or invalid under any law in any jurisdiction is ineffective to the extent of such unenforceability or invalidity without affecting the enforceability or validity of any other provision, and any such unenforceability or invalidity shall not invalidate or render unenforceable such provision in any other jurisdiction.
- 18.8. The Lending Agreement is binding on the receivers, administrators, permitted assignees and successors, and legal representatives of each Borrower and inures to the benefit of Lender, Administrator, Custodian and their respective assignees and successors.

Each Borrower and each Primary Dealer hereby consents to the assignment by Lender to any purchaser of Collateral (x) following a Collateral Surrender or (y) pursuant to Lender's exercise of remedies pursuant to Section 14.1 or 14.2 of this Agreement of (i) the representations and warranties of such Borrower and such Primary Dealer under the Lending Agreement and (ii) the rights of recourse against such Borrower and such Primary Dealer under Section 17.0 as if the Obligations secured by (or that had been secured by) such Collateral were owed to such purchaser.

- 18.9. Lender may sell, transfer, assign or participate to any other Person any or all of its rights and obligations under this Agreement, including any or all of its interests in any Loan. No Borrower may assign any of its rights or obligations hereunder except pursuant to a Permitted Loan and Collateral Transfer.
- 18.10. Lender is not required to provide a written advice to any Borrower for any Loan, Loan Repayment Amount or other Obligation or of the release of any Collateral; *provided* that reports with respect thereto shall be made available to each Borrower's Applicable Primary Dealer from time by Administrator in accordance with the Collateral Custody and Administration Agreement.
- 18.11. Lender has no liability for acting in reliance upon any communication (including a fax, telex, electronic communication, or similar communication) reasonably believed by it to be genuine or to be sent by an individual acting on behalf of a Borrower.
- 18.12. Each Primary Dealer acknowledges its obligation to comply with any tax withholding and reporting obligations that may be applicable to its activities hereunder (including in respect of payments to be made by it to its Applicable Borrowers) pursuant to applicable law.

- 18.13. A Borrower may, upon not less than ten Business Days' advance written notice to Custodian and Administrator from the Applicable Primary Dealer with respect to any of its Loans, appoint a replacement Applicable Primary Dealer (which shall be a Primary Dealer) with respect to such Loan (any such replacement, a "**Replacement Primary Dealer**"). Such appointment shall be effective upon written confirmation by the Replacement Primary Dealer to Custodian and to the Applicable Primary Dealer being replaced that it has accepted such appointment and agreed to act in such capacity with respect to such Loan and to perform all obligations with respect thereto set forth in this Agreement; *provided*, that no such appointment shall be effective unless (x) Custodian shall have been provided with a copy of such Replacement Primary Dealer's Letter of Agreement (to the extent it does not already have a copy of same) and (y) in the case of a Replacement Primary Dealer that is not already acting on behalf of a Borrower with respect to another Loan made hereunder, Custodian shall have satisfied its obligations under its "know-your-customer" and anti money laundering compliance programs). Upon the effectiveness of any such appointment, such Replacement Primary Dealer shall be deemed to be the Applicable Primary Dealer with respect to such Loan for all purposes of this Agreement.
- 18.14. Each Borrower hereby acknowledges and agrees that, solely to the extent that Custodian makes payment on behalf of such Borrower in respect of the interest on, or principal of, any Loan on the basis of any Interest Receipts or Principal Receipts erroneously credited to the account of such Borrower and subsequently reversed by the issuer of the applicable Collateral or its agent, (x) Custodian shall, to the extent permitted by applicable law, have a right of set-off against amounts credited to the Master TALF Collateral Account in respect of such Collateral and (y) Lender shall have a corresponding right of reimbursement against such Borrower for any amounts that, but for the exercise of any such set-off by Custodian, would have been paid to, or retained by, Lender.
- 18.15. Each Borrower hereby acknowledges and agrees that to the extent that it receives any Principal Receipts with respect to any Item of Collateral for any Loan Accrual Period as a result of Custodian not effecting the adjustment contemplated by ~~the last paragraph of~~ Section 5.3-2 in the circumstances contemplated by the proviso thereto (any such Principal Receipts, "**Applicable Principal Receipts**"), (x) such Borrower shall, promptly upon request of Lender (made through the Applicable Primary Dealer) (such request, a "**Request**"), repay to Lender all such Applicable Principal Receipts (and the outstanding principal amount of the applicable Loan shall be reduced to the extent such Applicable Principal Receipts are repaid to Lender) and (y) if following receipt of a Request such Borrower shall have failed to repay all such Applicable Principal Receipts to Lender by the fifth Business Day preceding the next succeeding Payment Date (the amount of Applicable Principal Receipts not so repaid, the "**Excess Principal Receipts**"), Lender shall have the right to apply all Interest Receipts in respect of the applicable Item of Collateral on such Payment Date (and on each subsequent Payment Date) to repay the outstanding principal amount of the applicable Loan in an aggregate amount not to exceed the amount of the Excess Principal Receipts, in lieu of the application of such Interest Receipts contemplated by paragraph *second* of Section 4.3.
- 18.16. Each Borrower, each Primary Dealer, Administrator and Custodian waives any right to presentment, notice of dishonor, protest, and any other notice of any kind except as expressly provided for herein.
- 18.17. Lender will use reasonable best efforts to hold, and will use reasonable best efforts to cause its agents to hold, in confidence all non-public information ("**Lender**

Information”) concerning any Loan to any Borrower furnished or made available to it by such Borrower or any of its Applicable Primary Dealers or their respective agents or representatives pursuant to the Lending Agreement except to the extent necessary or desirable for Lender to enforce any of its legal rights or remedies under the Lending Agreement; *provided* that nothing herein shall prevent Lender from disclosing any Lender Information (x) to the Board or to the United States Department of the Treasury or any of their respective oversight bodies upon any of their request or demand or (y) to the extent required by applicable laws or regulations or by any subpoena or similar legal process.

- 18.18. The Section headings used herein are for convenience only and are not to affect the construction hereof or be taken into consideration in the construction hereof.

19.0 PERMITTED LOAN AND COLLATERAL TRANSFER

- 19.1. Pursuant to a Permitted Loan and Collateral Transfer, a Borrower (the “**Assignor**”) may assign all of its Obligations with respect to a Loan (a “**Loan Assignment**”) to another Eligible Borrower (the “**Assignee**”).
- 19.2. To effect a Loan Assignment, the Applicable Primary Dealer of the Assignor shall deliver to Lender an assignment and assumption in the form of Appendix 4B, executed by (x) such Applicable Primary Dealer and (y) the Applicable Primary Dealer of the Assignee; *provided* that a Loan Assignment shall only become effective when and if (i) Lender shall have consented thereto (such consent to be evidenced by Lender’s signature to the assignment and assumption) and (ii) the Collateral securing the applicable Loan has been sold or transferred to the Assignee; *provided further*, that such Collateral shall at all times remain in the Master TALF Collateral Account as Collateral for such Loan.
- 19.3. Lender may delay or withhold its consent to any Loan Assignment for any reason and for any period of time. [Without limiting the foregoing, in the case of a Permitted Loan and Collateral Transfer involving a Loan secured by Legacy CMBS Collateral, Lender may condition its consent on the making by the Assignee of such additional representations and warranties concerning such Legacy CMBS Collateral as Lender shall require at such time \(if any\).](#)
- 19.4. The parties hereto acknowledge that Lender shall not consent to any Loan Assignment after December 31, 2009 unless it shall have determined, in its sole discretion, that unusual and exigent circumstances exist in the financial markets (it being understood that any such determination shall not otherwise limit Lender’s right to consent to any Loan Assignment).
- 19.5. Copies of each fully executed assignment and assumption shall be delivered by Lender to Custodian and Administrator. Copies of the documentation effecting the sale or transfer of Collateral described in the preceding Section 19.2 shall be delivered by each of the Applicable Primary Dealers to Custodian and Administrator.

20.0 AMENDMENT

Lender, in its sole discretion, may amend the Lending Agreement; *provided*, that no such amendment shall affect the rights or obligations of Custodian or Administrator without such Person’s consent. Lender shall notify each Primary Dealer, Administrator and Custodian (via a posting to the TALF Website) of any such amendment and, thereafter, any pledge of Collateral, request for any Loan or incurrence of any other Obligation shall constitute the

applicable Borrower's agreement to such amendment as of the effective date of such amendment; *provided, however*, that no such amendment shall affect the rights or obligations of any Borrower or any Primary Dealer with respect to any Loan outstanding prior to the effectiveness of such amendment.

21.0 NOTICE

21.1. Except as set forth in Section 20.0, any notice or other communication in respect of this Agreement may be given in any manner set forth below to the addresses or numbers or in accordance with the e-mail or electronic messaging system details provided in or pursuant to this Agreement with respect to the receiving party (the "**recipient**") and will be deemed effective as indicated:

- (a) if in writing and delivered in person or by courier, on the date it is delivered;
- (b) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted;
- (c) if sent by electronic messaging system, on the date that electronic message is received;
- (d) if sent by e-mail, on the date that e-mail is delivered; or
- (e) if by telephone or other oral communication, on the date that oral communication occurred, provided that such oral communication either is confirmed promptly in writing by at least one of the methods specified in (a) to (d) above or is recorded,

unless the date of the delivery (or attempted delivery), the receipt or the occurrence, as applicable, is not a Business Day or that communication is delivered (or attempted), received or shall have occurred, as applicable, after the close of business on a Business Day, in which case that communication shall be deemed given and effective on the first following day that is a Business Day.

21.2. If sent to a Primary Dealer, the notice must be addressed as indicated by such Primary Dealer in its Letter of Agreement, or as otherwise specified by such person in a record.

21.3. If sent to Lender, Administrator or Custodian, the notice must be addressed as specified below such Person's signature on the signature pages hereof.

21.4. **Lender shall have no obligation to provide any notices or other communications relating to this Agreement directly to any Borrower. All notices to be delivered to a Borrower shall be delivered to such Borrower's Applicable Primary Dealer for further distribution to such Borrower.**

21.5. Each Borrower agrees that it shall not send any notices or other communications pertaining to this Agreement directly to Lender. Any such notices or communications intended for Lender shall be made exclusively through such Borrower's Applicable Primary Dealer. Each Primary Dealer consents to the foregoing and agrees to promptly (and in any event within one Business Day of receipt thereof) provide to Lender any such notices or communications that it receives from its Applicable Borrowers.

22.0 TERMINATION

A Primary Dealer may terminate its consent to be bound by the Lending Agreement by giving written notice to Lender, so long as no Loan Repayment Amount and no other Obligation of any of its Applicable Borrowers is then outstanding; *provided* that thereafter such Primary Dealer shall not be entitled to request any Loans on behalf of its customers pursuant to the TALF Standing Loan Facility; *provided, further*, that any such termination shall not relieve such Primary Dealer of any liability or obligation arising hereunder prior to the date of such termination. Notice of termination shall not affect any provision of the Lending Agreement which by its terms survives termination of the Lending Agreement.

Each Primary Dealer acknowledges that (x) Lender shall have the right to terminate, at any time and in its sole discretion, such Primary Dealer's right to submit Initial Loan Requests and (y) if at any time it no longer appears on the Federal Reserve Bank of New York's list of "Primary Government Securities Dealers Reporting to the Government Securities Dealers Statistics Unit of the Federal Reserve Bank of New York", its right to submit Initial Loan Requests shall be automatically terminated; *provided*, in each case, that any such termination shall not affect such Primary Dealer's obligations hereunder with respect to any Loans previously made to its Applicable Borrowers.

23.0 GOVERNING LAW

The Lending Agreement, including any Loan or any other transaction entered into pursuant thereto, is governed by the law of the State of New York. The Lending Agreement is a security agreement for purposes of the UCC, as in effect in the State of New York, and other applicable law.

24.0 WAIVER OF JURY TRIAL

EACH PARTY HERETO (INCLUDING EACH BORROWER) HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, COUNTERCLAIM, OR CROSS CLAIM ARISING IN CONNECTION WITH, OUT OF, OR OTHERWISE RELATING TO THE LENDING AGREEMENT, THE COLLATERAL, OR ANY TRANSACTION OR AGREEMENT ARISING THEREFROM OR RELATED THERETO.

25.0 STATUS OF OTHER AGREEMENTS

The Lending Agreement and the TALF Standing Loan Facility Procedures represent the sole agreements and understandings with Lender governing or relating to loans to be made pursuant to TALF.

26.0 BINDING EFFECT

Delivery to Lender of a Letter of Agreement by a Primary Dealer shall evidence such Primary Dealer's agreement to be bound by the terms hereof. Upon such delivery by any such Primary Dealer, this Agreement shall become binding as to such Primary Dealer. Promptly upon receipt thereof, Lender shall provide to Custodian a copy of each executed Letter of Agreement.

This Agreement shall be binding as to each Borrower upon the making of any Loan to such Borrower.

IN WITNESS WHEREOF, Lender, Administrator and Custodian have caused this Agreement to be duly executed and delivered by their proper and duly authorized signatories as of the day and year first above written.

FEDERAL RESERVE BANK OF NEW YORK, as
Lender

By: _____
Name:
Title:

Name and Address for Notices:

Susan Stiehm
Federal Reserve Bank of New York
33 Liberty Street
New York, NY 10045-0001
Tel.: (212) 720-2071
susan.stiehm@ny.frb.org

with a copy to:

Joyce M. Hansen
Deputy General Counsel and Senior Vice President
Federal Reserve Bank of New York
33 Liberty Street
New York, NY 10045-0001
Tel.: (212) 720-5024
joyce.hansen@ny.frb.org

THE BANK OF NEW YORK MELLON, as
Administrator

By: _____
Name:
Title:

Name and Address for Notices:

Andrew J. Taylor
The Bank of New York Mellon
QSR Administration
101 Barclay Street, 4E
New York, NY 10286
Tel.: (212) 815 2943
andrew.j.taylor@bnymellon.com

THE BANK OF NEW YORK MELLON, as Custodian

By: _____
Name:
Title:

Name and Address for Notices:

Andrew J. Taylor
The Bank of New York Mellon
QSR Administration
101 Barclay Street, 4E
New York, NY 10286
Tel.: (212) 815 2943
andrew.j.taylor@bnymellon.com

[EACH OF THE PRIMARY DEALERS], as Primary
Dealer

[agreement of each Primary Dealer evidenced by
separate delivery to Lender of a Letter of
Agreement]

By: _____
Name:
Title:

By: _____
Authorized signature(s)

Name(s)

Title(s)

EXHIBIT 1 TO LETTER OF AGREEMENT

[Letterhead of the Primary Dealer]

FORM OF ANNUAL CERTIFICATION IN CONNECTION WITH TALF MLSA

[Name of Primary Dealer] hereby certifies that (A) it is a financial institution subject to regulation by [name of Federal functional regulator], (B) it has implemented an anti-money laundering program pursuant to requirements issued by [name of Federal functional regulator] pursuant to 31 U.S.C. §5318(h), and (C) it (or its agent) will perform all aspects of its customer identification program with respect to each Applicable Borrower, which customer identification program is subject to examination by [name of Federal functional regulator].

[Name of Primary Dealer] further certifies that it is aware that any Loans made by Lender under the TALF program to its customers shall be made in reliance on this certification and on the representation and warranty of [Name of Primary Dealer] contained in Section 10.2(d) of the TALF Master Loan and Security Agreement.

IN WITNESS WHEREOF, the undersigned has signed this Annual Certification on _____, 2____.

Name:
Title:

Name:
Title:

APPENDIX 2: REQUIRED CUSTOMER AGREEMENT TERMS

The following provisions, or alternative provisions that are in substance substantially equivalent thereto, shall be included in the Customer Agreement that each Primary Dealer shall enter into with each of its customers that intends to be a Borrower under TALF:

1. [Customer] authorizes [Primary Dealer] to execute and deliver on its behalf the Master Loan and Security Agreement in connection with Federal Reserve Bank of New York's Term Asset-Backed Securities Loan Facility (the "MLSA"; capitalized terms used but not defined herein having the meanings set forth in the MLSA) and to bind it to the terms of the MLSA and to grant on behalf of [Customer] a security interest in such Customer's Collateral, and represents that (x) it has the power to so authorize [Primary Dealer] and (y) it has taken all necessary action to authorize such execution and delivery by [Primary Dealer].
2. [Customer] authorizes [Primary Dealer] to act as its agent in connection with all Loans to be borrowed by it through [Primary Dealer] pursuant to the MLSA and with the pledge of Collateral to secure such Loans, and authorizes [Primary Dealer] to deliver notices and instructions to Lender, Custodian and Administrator on its behalf in connection with the foregoing, and acknowledges that the recipients of such notices are entitled to rely thereon.
3. [Customer] authorizes [Primary Dealer] to receive on its behalf notices and instructions from Lender, Custodian and Administrator that relate to Loans made to, or Collateral pledged by, [Customer] through [Primary Dealer] pursuant to the MLSA or that otherwise relate to any Obligation of [Customer] incurred by it through [Primary Dealer] under the MLSA, and [Primary Dealer] agrees to promptly provide to [Customer] copies of any such notices and instructions.
4. [Customer] agrees to provide [Primary Dealer] with all information required or reasonably requested by [Primary Dealer] in connection with [Primary Dealer's] "know your customer" and anti money laundering compliance programs, and authorizes [Primary Dealer] to provide such information to Lender, Custodian and Administrator upon request.
5. [Customer] agrees that any funds to be disbursed to it in respect of the Loans borrowed or the Collateral pledged by [Customer] through [Primary Dealer] pursuant to the MLSA shall be disbursed to an account of [Primary Dealer], for further distribution to it.

APPENDIX 3B: FORM OF LOAN REQUEST (LOANS SECURED BY CMBS COLLATERAL)

Subscription Date:																			
Closing Date:																			
3-Year Maturity Date:																			
5-Year Maturity Date:																			
Primary Dealer	Amendment /New	Borrower	Borrower Type	Borrower Address	Borrower Tax ID	New Issuance Y/N	Collateral Count	CUSIP	Loan Term	Collateral WAL	Loan Principal Amount	Haircut Amount	Collateral Face Amount	Collateral Current Factor	Clean Price	Collateral Value	DTC Participant #:	Sub Account #: (if any)	Settlement Counterparty and Contact Details (if NOT Primary Dealer)

APPENDIX 4A: FORM OF ASSIGNMENT AND ASSUMPTION (ASSIGNMENT BY LENDER)

This Assignment and Assumption (this “**Assignment and Assumption**”) is dated as of the Effective Date set forth below and is entered into by and between the Assignor identified in item 1 below (the “**Assignor**”) and the Assignee identified in item 2 below (the “**Assignee**”) pursuant to the Master Loan and Security Agreement identified below (the “**Loan Agreement**”). Capitalized terms used but not defined herein shall have the meanings given to them in the Loan Agreement, receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Loan Agreement, as of the Effective Date inserted by Lender (i) all of the Assignor’s rights and obligations under the Loan Agreement, any other Lending Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the Loans identified below and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Loan Agreement, any other Lending Agreement or any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned by the Assignor to the Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as the “**Assigned Interest**”). Each such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor: _____
2. Assignee: _____
3. Loan Agreement: Master Loan and Security Agreement among Federal Reserve Bank of New York, as Lender, The Bank of New York Mellon, as Administrator, The Bank of New York Mellon, as Custodian, and the Primary Dealers party thereto (each on behalf of itself and its respective Borrowers), as amended or supplemented from time to time.

4. Assigned Interest:

<u>Identification of Loan</u>	<u>Loan Closing Date</u>	<u>Outstanding Principal Amount of Loan Assigned</u>
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Effective Date: _____, 20__ [TO BE INSERTED BY LENDER]

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR
[NAME OF ASSIGNOR]

By:

Title:

ASSIGNEE
[NAME OF ASSIGNEE]

By:

Title

**ANNEX 1 to ASSIGNMENT AND ASSUMPTION
STANDARD TERMS AND CONDITIONS**

1. Representations and Warranties.

1.1. Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the relevant Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Loan Agreement or any other Lending Agreement, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of any Lending Agreement or any collateral thereunder, (iii) the financial condition of any Borrower or any other party to the Loan Agreement, any of their subsidiaries or Affiliates or any other Person obligated in respect of any Lending Agreement or (iv) the performance or observance by any Borrower or any other party to the Loan Agreement, any of their subsidiaries or Affiliates or any other Person of any of their respective obligations under any Lending Agreement.

1.2. Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Loan Agreement, (ii) from and after the Effective Date, it shall be bound by the provisions of the Loan Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iii) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in acquiring assets of such type, (iv) it has received a copy of the Loan Agreement and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest and (v) it has, independently and without reliance upon the Assignor or any other party to the Loan Agreement, and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest; and (b) agrees that (i) it will, independently and without reliance upon the Assignor, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under any Lending Agreement, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of any Lending Agreement are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) shall be made for the account of the Assignor for amounts which have accrued to but excluding the Effective Date and for the account of the Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York.

**APPENDIX 4B: FORM OF ASSIGNMENT AND ASSUMPTION
(ASSIGNMENT BY BORROWER)**

This Assignment and Assumption (this “**Assignment and Assumption**”) is dated as of the Effective Date set forth below and is entered into by and between the Assignor identified in item 1 below (the “**Assignor**”) and the Assignee identified in item 2 below (the “**Assignee**”), through their respective Applicable Primary Dealers, pursuant to the Master Loan and Security Agreement identified below (the “**Loan Agreement**”). Capitalized terms used but not defined herein shall have the meanings given to them in the Loan Agreement, receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Loan Agreement, as of the Effective Date inserted by Lender, all of the Assignor’s rights and obligations in its capacity as a Borrower under the Loan Agreement, any other Lending Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the Loans identified below and any associated rights and obligations with respect thereto (the rights and obligations sold and assigned by the Assignor to the Assignee above being referred to herein collectively as the “**Assigned Interest**”). Each such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

Upon the effectiveness of this Assignment and Assumption, Assignee shall become bound to the terms and conditions of the Loan Agreement with respect to such Assigned Interest.

1. Assignor: _____

2. Assignee: _____

3. Loan Agreement: Master Loan and Security Agreement among Federal Reserve Bank of New York, as Lender, The Bank of New York Mellon, as Administrator, The Bank of New York Mellon, as Custodian, and the Primary Dealers party thereto (each on behalf of itself and its respective Borrowers), as amended or supplemented from time to time

4. Assigned Interest:

<u>Loan Identification #</u>	<u>Borrower Name</u>	<u>Principal Amount Outstanding*</u>	<u>Accrued Interest / as of [Proposed Effective Date]*</u>
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* Amounts to be provided by Custodian and communicated to Assignor and Assignee through their Applicable Primary Dealers. Applicable Primary Dealers to confirm agreement back to Custodian, and to notify Custodian of effectiveness of transfer of related collateral.

The parties hereto acknowledge and agree that this assignment and assumption is subject to the consent of Lender, which consent may be withheld or delayed for any reason and for any period of time, and this assignment and assumption is subject in all respects (including as to effectiveness) to Sections 19.1 through 19.5 of the MLSA.

Effective Date: _____, 20__ [TO BE INSERTED BY LENDER]

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR
[NAME OF ASSIGNOR]

Through its Applicable Primary Dealer:

[_____]

By:

Title:

ASSIGNEE
[NAME OF ASSIGNEE]

Through its Applicable Primary Dealer:

[_____]

By:

Title:

Consented to and Accepted:

FEDERAL RESERVE BANK OF NEW YORK, as
Lender

By: _____

Name:

Title:

**ANNEX 1 to ASSIGNMENT AND ASSUMPTION
STANDARD TERMS AND CONDITIONS**

1. Representations and Warranties.

1.1. Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the relevant Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority to authorize, has taken all action necessary to authorize, and has authorized its Applicable Primary Dealer to execute and deliver this Assignment and Assumption on its behalf and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to the performance or observance by Lender or any other party to the Loan Agreement, any of their subsidiaries or Affiliates or any other Person of any of their respective obligations under any Lending Agreement.

1.2. Assignee. The Assignee (a) represents and warrants that (i) each of the representations and warranties applicable to Borrowers under Section 10.1 of the Loan Agreement are true and correct as to the Assignee, (ii) from and after the Effective Date, it shall be bound by the provisions of the Loan Agreement as a Borrower thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Borrower thereunder, (iii) it is sophisticated with respect to decisions to assume obligations of the type represented by the Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in assuming obligations of such type, (iv) it has received a copy of the Loan Agreement and such other documents and information as it deems appropriate to make its own analysis and decision to enter into this Assignment and Assumption and to assume the obligations represented by the Assigned Interest and (v) it has, independently and without reliance upon the Assignor or any other party to the Loan Agreement, and based on such documents and information as it has deemed appropriate, made its own analysis and decision to enter into this Assignment and Assumption and to assume the obligations represented by the Assigned Interest; and (b) agrees that (i) it will, independently and without reliance upon the Assignor, and based on such documents and information as it shall deem appropriate at the time, continue to make its own decisions in taking or not taking action under any Lending Agreement, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of any Lending Agreement are required to be performed by it as a Borrower.

2. Payments. From and after the Effective Date, all payments in respect of the Collateral securing the Assigned Interest shall be made for the account of the Assignor for amounts which have accrued to but excluding the Effective Date and for the account of the Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York.

**APPENDIX 5: FORM OF COLLATERAL SURRENDER AND
ACCEPTANCE NOTICE**

[Date]

The Bank of New York Mellon, as Custodian and Administrator
QSR Administration
101 Barclay Street, 4E
New York, NY 10286
Att: Andrew J. Taylor
talf@bnymellon.com

Ladies and Gentlemen:

Reference is made to the Master Loan and Security Agreement (as it may be amended or supplemented from time to time, the "**MLSA**"), by and among Federal Reserve Bank of New York, as Lender, The Bank of New York Mellon, as Administrator, The Bank of New York Mellon, as Custodian, and the Primary Dealers party thereto. Terms defined in the MLSA and not otherwise defined herein are used herein with the same meanings.

The Borrower identified on the signature page hereto (the "**Subject Borrower**"), acting though [name of Primary Dealer], as its duly authorized agent, hereby notifies you of its election to exercise its Collateral Surrender Right with respect to the following Loan:

Loan Identification #	Borrower Name	Collateral (CUSIP's)
----------------------------------	----------------------	---------------------------------

The Subject Borrower hereby consents to the acceptance of the Collateral set forth above (the "**Subject Collateral**") in full satisfaction of the Obligations secured thereby (the "**Subject Obligations**"). Upon the effectiveness of this Collateral Surrender in accordance with Section 13.3 of the MLSA, the Subject Borrower acknowledges that all of its right, title and interest in the Subject Collateral shall be transferred to Lender.

The Subject Borrower represents and warrants to Lender that, as of the date of effectiveness of the Collateral Surrender contemplated hereby, the Subject Collateral is free of any Adverse Claim, except as created under the Lending Agreement.

The Subject Borrower hereby acknowledges and agrees that effectiveness of the Collateral Surrender contemplated hereby shall not (x) discharge any Obligation that the Subject Borrower may have to Lender pursuant to the MLSA other than the Subject Obligations or (y) affect any right of recourse against the Subject Borrower that Lender may have pursuant to Section 17.0 of the MLSA or as a result of a breach of the representation and warranty set forth in the preceding paragraph (which representation and warranty shall survive effectiveness of the Collateral Surrender contemplated hereby).

The Subject Borrower and the Applicable Primary Dealer party hereto each hereby consent to the assignment by Lender to any purchaser of the Subject Collateral following the effectiveness of the Collateral Surrender contemplated hereby of (i) the representations and warranties of the Subject Borrower and the Applicable Primary Dealer under the Lending Agreement and (ii) the rights of recourse against the Subject Borrower and the Applicable Primary Dealer under Section 17.0 of the MLSA as if the Subject Obligations had been owed to such purchaser.

The undersigned Primary Dealer represents and warrants to Lender that (x) it has duly authorized, executed and delivered this Collateral Surrender and Acceptance Notice and (y) it has been duly authorized by the Subject Borrower to execute and deliver this Collateral Surrender and Acceptance notice on the Subject Borrower's behalf.

[Signature page follows.]

Very truly yours,
[NAME OF PRIMARY DEALER], in its
individual capacity and as the Subject
Borrower's Applicable Primary Dealer with
respect the Loan set forth in the table
above

By: _____
Name:
Title:

NAME OF BORROWER:
[]

ADDRESS OF BORROWER:
[]

cc: Federal Reserve Bank of New York, as Lender
33 Liberty Street
New York, NY 10045-0001
Att: TALF Operations
talfreports@ny.frb.org

Federal Reserve Bank of New York, as Lender
33 Liberty Street
New York, NY 10045-0001
Att: TALF Legal
nytalf.legal@ny.frb.org

The Bank of New York Mellon, as Administrator
QSR Administration
101 Barclay Street, 4E
New York, NY 10286
Att: Andrew J. Taylor
talf@bnymellon.com

APPENDIX 6: FORM OF PREPAYMENT NOTICE

[Date]

The Bank of New York Mellon, as Custodian and Administrator
QSR Administration
101 Barclay Street, 4E
New York, NY 10286
Att: Andrew J. Taylor
talf@bnymellon.com

Ladies and Gentlemen:

Reference is made to the Master Loan and Security Agreement (as it may be amended or supplemented from time to time, the "**MLSA**"), by and among Federal Reserve Bank of New York, as Lender, The Bank of New York Mellon, as Administrator, The Bank of New York Mellon, as Custodian, and the Primary Dealers party thereto. Terms defined in the MLSA and not otherwise defined herein are used herein with the same meanings.

The Borrower identified on the signature page hereto (the "**Subject Borrower**"), acting though [name of Primary Dealer], as its duly authorized agent, hereby notifies you of its election to prepay the following Loans as set forth below (the "**Loan Prepayment**"):

Loan Identification #	Borrower Name	Prepayment Amount	Accrued Interest (as of _____)
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The Subject Borrower, acting through [name of Primary Dealer] as its duly authorized agent, hereby acknowledges that effectiveness of the Loan Prepayment contemplated hereby shall not (x) affect any right of recourse against the Borrower that Lender may have pursuant to Section 17.0 of the MLSA or (y) discharge any other Obligation that the Borrower may have to Lender pursuant to the MLSA.

The Subject Borrower, acting through [name of Primary Dealer] as its duly authorized agent, hereby notifies Custodian that the Prepayment Amount will be delivered by [Name of Payor and Correspondent Bank]. Upon receipt in full of the Prepayment Amount, Custodian shall release the Collateral previously securing the Loans identified in the chart above (in the case of a partial prepayment, such release to be on a Pro Rata Basis) in accordance with Section 8.1 or 8.2 of the MLSA, as applicable.

The Subject Borrower, acting through [name of Primary Dealer] as its duly authorized agent, hereby directs Custodian to transfer the released Collateral to a DTC account in accordance with the following instructions:¹

¹ If no instructions are specified, Custodian shall transfer the released Collateral to the Applicable Primary Dealer's DTC account, for further distribution to the Subject Borrower as contemplated by the MLSA.

DTC Account Name: _____
DTC Participant Number: _____
Sub-Account Number: _____

Upon such transfer, none of Custodian, Administrator or Lender shall have any further liability or obligation to the Subject Borrower with respect to such Collateral.

The undersigned Primary Dealer represents and warrants to Lender that it has been duly authorized by the Subject Borrower to execute and deliver this Loan Prepayment notice on the Subject Borrower's behalf.

[Signature page follows.]

Very truly yours,
[NAME OF PRIMARY DEALER], as the
Subject Borrower's Applicable Primary
Dealer with respect the Loan set forth in
the table above

By: _____
Name:
Title:

NAME OF BORROWER:
[]

ADDRESS OF BORROWER:
[]

cc: Federal Reserve Bank of New York, as Lender
33 Liberty Street
New York, NY 10045-0001
Att: TALF Operations
talfreports@ny.frb.org

Federal Reserve Bank of New York, as Lender
33 Liberty Street
New York, NY 10045-0001
Att: Annmarie RoweStraker
annmarie.rowestraker@ny.frb.org

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Document 2 ID	file://M:\CA\DELTAVIEW\mlsa.090702_1406.doc
Description	mlsa.090702_1406
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Legend:	
Insertion	
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Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
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Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	337